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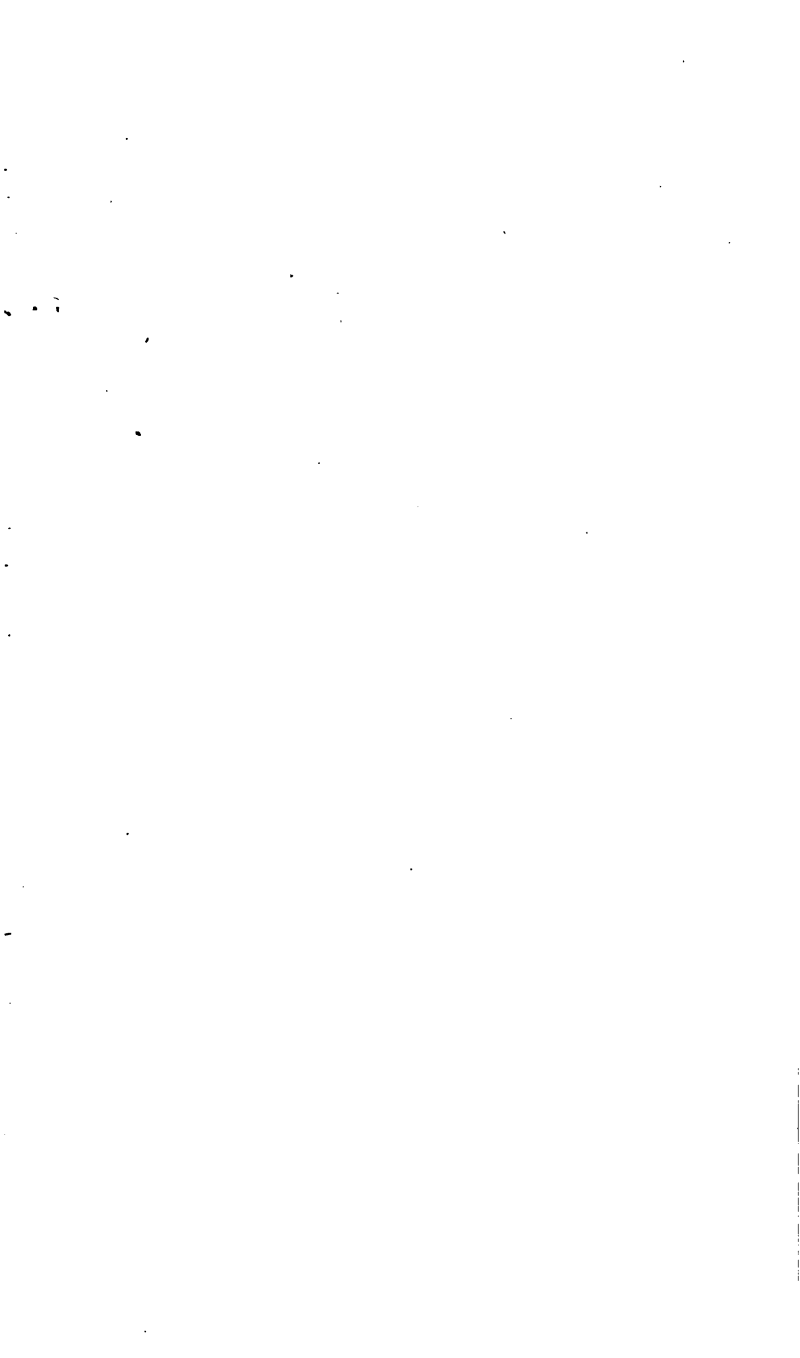
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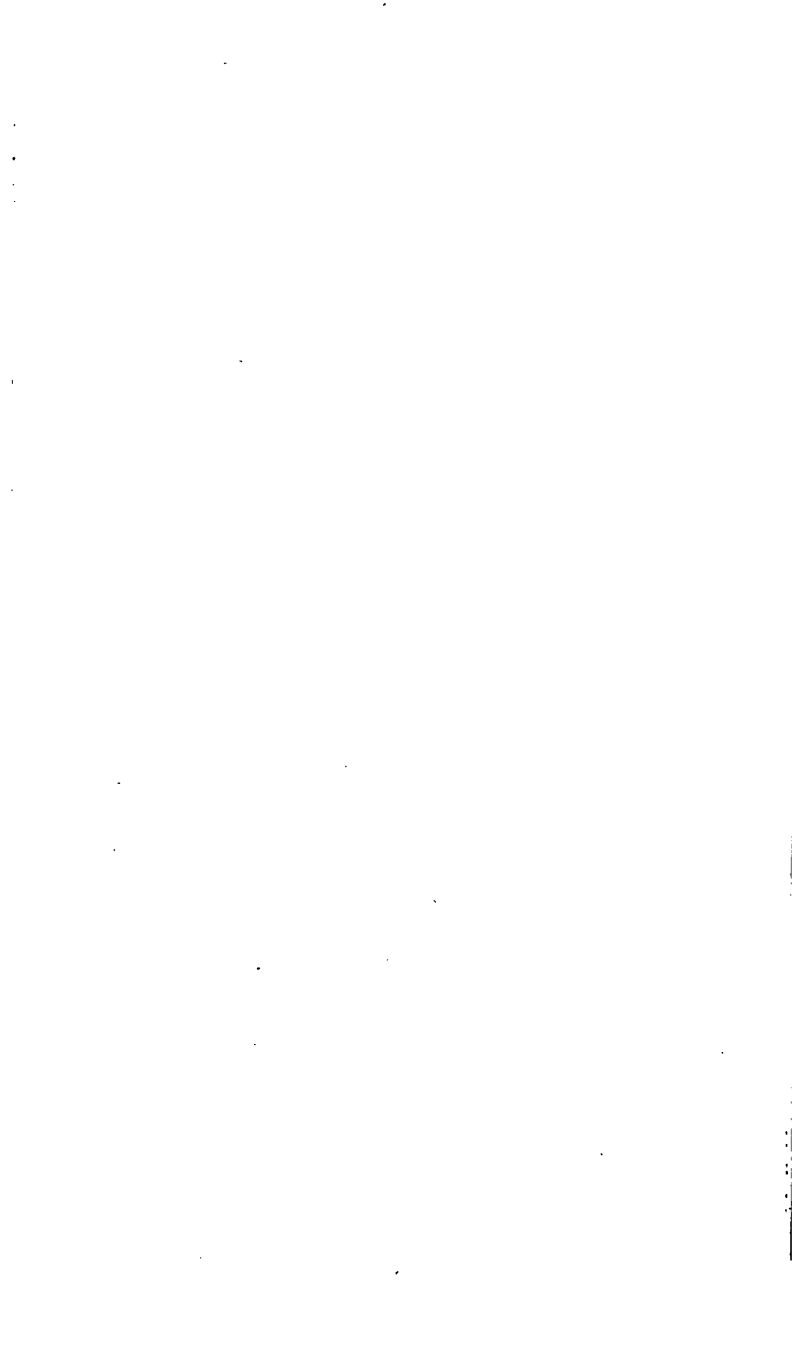
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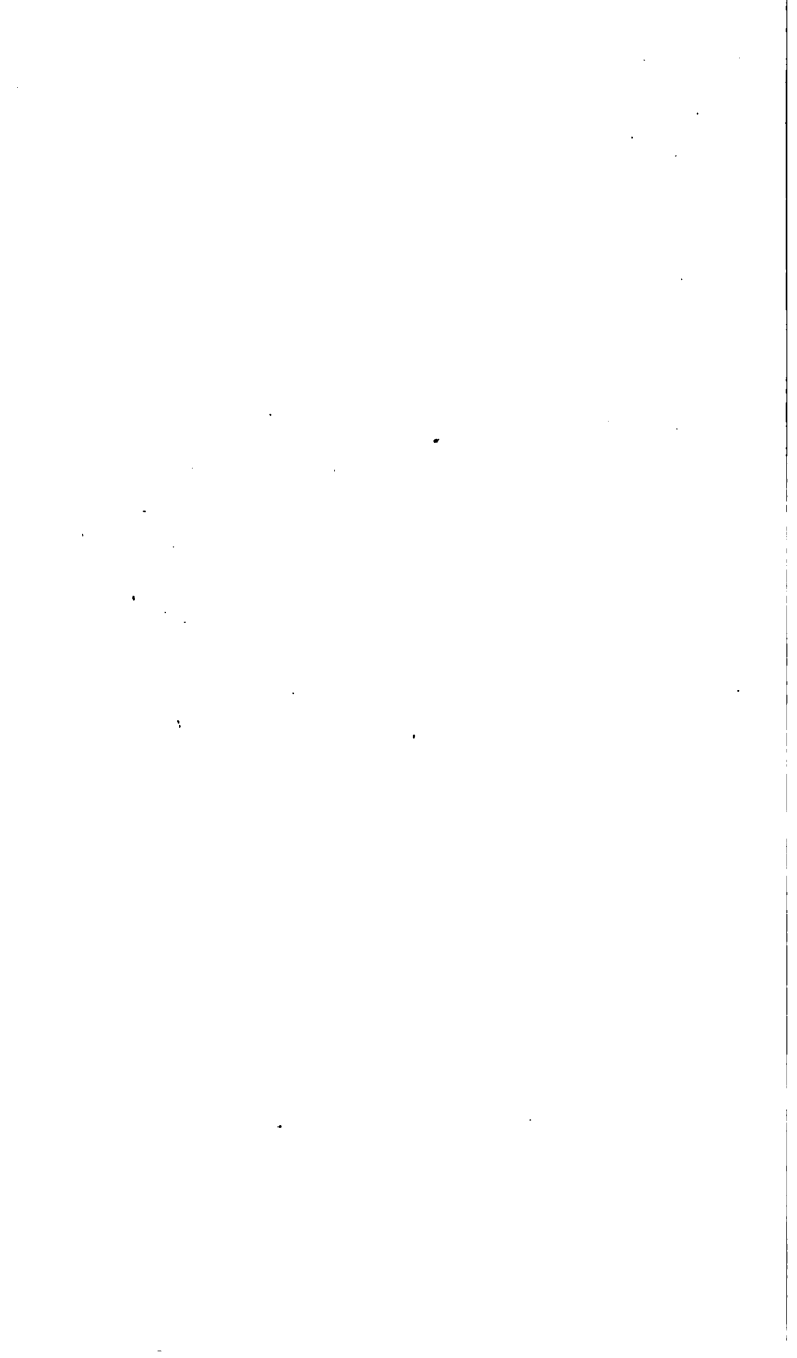
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THE ACT
FOR THE
COMMUTATION OF TITHES

IN
ENGLAND AND WALES.



WITH AN
ANALYSIS, EXPLANATORY NOTES, AND AN INDEX.

BY
JOHN MEADOWS WHITE, ESQ.
THE SOLICITOR ATTENDING ON THE BILL.

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271.

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NOTICE.

HAVING been directed by Lord John Russell to attend the Parliamentary Counsel to the Home Office (Mr. Drinkwater), during the progress, through both Houses of Parliament, of the great and healing measure brought forward by his Lordship for the Commutation of Tithes in England and Wales, and having thus become acquainted with its details and purport, from a period immediately subsequent to its first introduction into the House of Commons, I trust that this early edition of the Act, with an Analysis and Notes, may not be unacceptable. It will readily be seen that what I have written is intended for plain and unlearned readers; but I should have felt less confidence than I do that my observations may be useful even to this class, if I had not had access to Mr. Drinkwater's notes and papers, with permission to use them as freely and fully as I thought proper. The Analysis of the Act is chiefly taken from one prepared

by that gentleman for the use of the conductors of the Bill, and will be found of great service in explaining its provisions.

I have also had the advantage of submitting the work to the Rev. Professor Jones,* of Hayleybury and King's Colleges, the author of an admirable pamphlet upon the subject of Tithe Commutation, and the various modes by which it might be effected : I trust he will allow me to make this public acknowledgment of the valuable suggestions I have received from him.

JOHN MEADOWS WHITE,

1, FREDERICK'S PLACE, OLD JEWRY,
August 18, 1836.

* Since appointed to be one of the Tithe Commissioners, by his Grace the Archbishop of Canterbury.

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A C T
FOR
THE COMMUTATION OF TITHES
IN
ENGLAND AND WALES.

THE object of this Act is to convert all the uncommuted tithes in England and Wales into a corn rent-charge, payable in money according to the value of a fixed quantity of corn, as ascertained from year to year by the average price of corn for the seven years ending at the preceding Christmas.

The mode of making this conversion is, first, to find the gross average money value of the tithes of each parish for seven years ending Christmas 1835; secondly, to apportion the amount of that value upon the lands of the several tithe-payers; thirdly, to ascertain how much corn could be purchased with such amount; one-third of it to be laid out in wheat, one-third in barley, and one-third in oats, at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding Christmas 1835; fourthly and finally, in every future year, to make payable the price of the same quantity of wheat, barley, and oats, at their average prices, founded on a like calculation of the returns

for the seven years ending at each preceding Christmas.

A similar system, as applicable to rent, has been long in practice in Scotland, and has given great satisfaction ; chiefly because it fixes the amount of the rent in grain, whilst it allows of a variation in value, according to the average market price of the grain of which the rent consists.

The Act provides two methods of commutation :— first, By parochial agreement, voluntary on the part of a majority of persons having two-thirds interest in the lands, two-thirds interest in the great tithes, and two-thirds interest in the small tithes, but binding on the minority if unappealed against, or if no sufficient cause of objection shown ; secondly, By compulsory awards. The machinery to regulate, confirm, control, and effect these agreements and awards, is a central Board of Commissioners, with assistant commissioners, and an establishment under them adequate for the purpose. Parochial agreements and apportionments to be binding must be confirmed by the commissioners, and compulsory apportionments and awards, are made by them ; but the latter power, except in the case of a compulsory apportionment after a voluntary agreement (54), does not come into effect till 1st October, 1838.

In both cases, the gross value of the tithes payable by a parish, or district (allowed to be treated as a parish for the purpose of commutation by the commissioners,) is first to be ascertained. In the case of a voluntary agreement, it is not probable that there will be much difficulty in ascertaining this. In the case of a compulsory award, the commissioners are required

by the Act to take the seven years' value of the tithes, if paid in kind, or the compositions (if any) paid during the like period, as the basis of the commutation. A power is given to them to increase or decrease the amount thus ascertained by one-fifth or twenty per cent., for the purpose, when the amount paid would not fairly represent the permanent average value of the tithe, of bringing the average nearer to such value. And in cases of fraud, collusion, or special circumstances, a discretion is given to the commissioners to disregard the compositions altogether, and to adopt the average payments upon the basis of payments from similar lands in the neighbourhood.

After the gross value of the tithes is ascertained, the landowners are to appoint valuers, to apportion the amount amongst them. If no voluntary apportionment be made in six months, the commissioners must make such apportionment. As soon as the apportionment is complete the commissioners are to confirm it, and it then becomes binding on all parties, and fixes the value of the rent-charge to be paid in future in the place of the tithes, by the several landowners in the parish ; and this amount is to be thereafter rendered upon a calculation of the price of grain as before-mentioned. The case of every kind of tithe, moduses, exemptions, and the like, is provided for in the Act ; legal disabilities are removed ; facilities are given for referring all disputes to arbitration, or to an immediate and cheap mode of trial, or to the commissioners, and for charging the expenses of the commutation on the lands of owners having less estates than fee-simple or fee-tail ; and incumbents have a similar power of charging the expenses on their livings.

Special provisions are also inserted to meet cases when the tithe is not of an ordinary nature, such as hops, fruits, garden produce and wood; and also for special apportionments so as to discharge any part of the lands which the owner may desire, and fix it on other parts of his lands, provided the annual value of the latter exceeds by three times the value of the rent-charge proposed to be fixed upon it. In the case of ecclesiastical tithes, land to an extent not exceeding twenty acres may be given by way of commutation, either in the parochial agreement, or by the apportionment before its final confirmation.

The consent of the patron is required in all cases of ecclesiastical tithe commuted by voluntary agreements, and such agreements are to be submitted to the Bishop of the diocese, for his observations and opinion before confirmation by the Commissioners.

No one is to be personally liable for the rent-charge, but the remedy, as in the case of ordinary rent-charges, is by distress and entry on the lands out of which it issues, the party entering being liable to account upon a judge's order instead of the tedious and vexatious course of a suit in Chancery.

The following is a table (presented to the House of Commons on the 3d May last) of corn returns, showing the average prices of wheat, barley, and oats; calculated for seven years, ending at Christmas 1835.

“C O R N .

RETURN to an Order of the Honourable the House of Commons,
dated 19th February, 1836;—for,

AN ACCOUNT of the Average Prices of BRITISH
WHEAT, BARLEY, and OATS, in *England and Wales*, for
the Seven Years preceding 31st December, 1835, com-
puted from the Weekly Averages of the CORN RETURNS.

YEARS ENDED.	WHEAT		BARLEY.		OATS.	
	Per Quarter.		Per Quarter.		Per Quarter.	
	s.	d.	s.	d.	s.	d.
1829 . .	66	3	32	6	22	9
1830 . .	64	3	32	7	24	5
1831 . .	66	4	38	0	25	4
1832 . .	58	8	33	1	20	5
1833 . .	52	11	27	6	18	5
1834 . .	46	2	29	0	20	11
1835 . .	39	4	29	11	22	0
Average of the Seven Years }	56	8	31	9	22	0*

WILLIAM JACOB,
Comptroller of Corn Returns."

Corn Department,
Board of Trade. }

* Hence the price of the bushel is, wheat, 7s. 0½d.; barley, 3s. 11½d.; oats, 2s. 9d.

This

This average when taken as the basis for commuting 300%. of tithes, would produce the following result :—

	Qrs.
100%. laid out in wheat, at 56s. 3d. per quarter,	
would produce	35.56
100%. laid out in barley, at 31s. 9d. per quarter,	
would produce	62.98
100%. laid out in oats, at 22s. per quarter,	
would produce	90.9

Suppose that in 1837 the average prices of the seven preceding years, ending Christmas 1836, should prove to be—

Wheat	60s.
Barley	40s.
Oats	20s.

Then, a corn rent-charge rendering the number of quarters above specified, and which are this year worth 300%. would produce in 1837, as follows :—

35.56 quarters of wheat, at 60s.	£106	13	6
62.98 — of barley, at 40s.	125	19	2
90.9 — of oats, at 20s.	90	18	0

Total value of rent-charge for 1837 £323 10 8*

Such is the kind of variation which will take place under the Act of which the following is an analysis.

* For a short mode of calculating the variations of rent-charge under the Act, see Note at the end of the Act.

ANALYSIS

OF

AN ACT FOR THE COMMUTATION OF TITHES IN ENGLAND AND WALES.

The figures in the text point out the number of the clause in which the provision treated of is contained.

CLAUSES I.—XI.

APPOINTMENT AND GENERAL POWER OF COMMISSIONERS AND ASSISTANT COMMISSIONERS.

THREE commissioners are to be appointed ; two by the Secretary of State, and one by the Archbishop of Canterbury, removable at their joint pleasure, (1.) They are to sit as a board in the Metropolis, and superintend the execution of the Act. Instruments and copies under their seal are to be received in evidence, and no agreement or award is to be in force unless so sealed or stamped, (2.) They are to make a yearly report of their proceedings to the Secretary of State, which report is to be laid before Parliament, (3.)

The commissioners are empowered to appoint a sufficient number of assistant commissioners, a secretary, and assistant secretary, and such clerks, messengers, and officers, as they may deem necessary, and to supply vacancies as they occur ; but they are not to appoint more than twelve assistant commissioners,

without the consent of the treasury ; and the number of clerks, messengers, and other officers, is subject to the like consent, (4.) Neither commissioners nor assistant commissioners are to sit in the House of Commons, (5,) and the duration of the commission is limited to five years, and the end of the then next Session of Parliament, (6.)

The salary of a commissioner is not to exceed 1500*l.* ; that of an assistant commissioner 3*l.* per diem, while actually employed in the business of the commission, besides his reasonable travelling expenses as allowed by the treasury. The salaries of the secretary and assistant secretary are not to exceed 800*l.*, and those of the clerks, &c. are to be in fit proportion, (7.)

The salaries and expenses are charged on the consolidated fund, (8.)

The commissioners and assistant commissioners are to take an oath for the due execution of their offices, and their appointments are to be published in the Gazette, (9.) They have power to examine witnesses upon oath, and to call for returns and books and papers, but not to require the disclosure of titles, nor to compel witnesses to go more than ten miles from home, (10.)

With the exception of acts required to be done under the seal of the commissioners, the assistant commissioners may exercise all or such of the powers of the commissioners as the commissioners may think fit to delegate to them, (11.)

CLAUSES XII.—XVI.

INTERPRETATION CLAUSES.

The masculine gender and singular number are used in this bill to express both sexes, and more persons than one; also the Crown and bodies corporate, to whom the word "person" is extended.

"Lands" is used for all messuages, lands, tenements, and hereditaments.

"Tithes," for all uncommuted tithes, portions, and parcels of tithes, moduses, compositions, real and customary payments.

"Parish," "parochial," mean also extra-parochial places and those townships which (chiefly in the North,) are treated as separate parishes by 13th and 14th Ch. II. c. 12; also every district which the commissioners may direct to be considered as a district for the purposes of the Act.

"Landowner," "titheowner," mean persons in possession of the rehts and profits, except tenants holding under a lease of not more than fourteen years, or under any lease paying a rent of not less than two-thirds of the clear yearly value. Tenants holding under *valuable* leases for more than fourteen years are treated as joint owners with their landlord, and persons in possession under a writ of execution or order of a court of equity are treated as joint owners with the persons against whom such writ or order is made, (12.)

The ownership or patronage of the crown is to be exercised by those functionaries by whom the administration thereof is chiefly or usually managed, (13.)

Persons filling more than one character, *e.g.* patron and landowner or incumbent, may act and be dealt

with in both characters, (14 ;) and if under legal disabilities may act by their proper legal representatives, or if there be no legal representative, then by such person as the commissioners may nominate to represent them, (15 ;) and all acts required to be done by any person may be done by his agent duly appointed according to the form given in the Act, (16.)

CLAUSES XVII.—XXXI.

VOLUNTARY AGREEMENTS FOR A RENT-CHARGE BETWEEN LAND-OWNERS AND TITHE-OWNERS.

The Act treats the commutation as consisting of two separate processes :—

1st. The determination of the total sum to be paid for the tithes of any parish.

2dly. The apportionment of the total sum among the different lands on which it is to be charged.

The first of these processes may be effected, 1st, voluntarily ; 2dly, (after 1st October, 1838,) compulsorily. The voluntary determination of the total sum to be paid is the object of the clauses now under discussion.

(17, 18.) Any number of landowners or tithe-owners possessing an interest, (to be ascertained by the poor rates, (19),) equal to one-fourth of the titheable lands, or one-fourth of the great and small tithes, may summon a parochial meeting of all the land-owners and all the tithe-owners of the parish, giving twenty-one days' notice ; and any agreement made at any such meeting, or adjourned meeting, (20), or signed within six months by the owners of two-thirds of the titheable lands, two-thirds of the

great-tithes, and two-thirds of the small tithes, if containing the particulars required by the Act, (21,) and if confirmed by the commissioners, is to be binding on the whole parish,* and on all interested parties.† The commissioners are to frame and furnish forms on the application of churchwardens and overseers, (22;) and if the commissioners shall think fit, any commissioner or assistant commissioner may attend any parochial meeting, and advise the terms of agreement, but without being then able to exercise compulsory powers, (23.) Suits and differences pending at the time of the agreement may be referred by the parties to arbitration, (24,) but reversioners will not be bound by such references unless sanctioned by the commissioners.

Agreements pending at the time of the Act passing may be confirmed in like manner (25); but no voluntary agreement is to be deemed executed by any ecclesiastical tithe-owner, unless consented to by the patron, (26.) When executed by a sufficient number of persons to make it binding, it is to be sent to the commissioners in London, who are to satisfy themselves that the proceedings have been regular and without fraud or collusion, and are thereupon to confirm it under their hands and official seal, (27.) In the case of ecclesiastical tithes no confirmation is to take place

* It is important to observe that the total sum is the only thing fixed in these agreements, and that although the agreement will probably be founded upon a calculation of what the individual payments up to that time have been, the latter may still be altered by the apportionment. This circumstance is one of the distinctive characteristics of the Act.

† The consent of the owners of the great tithes and small tithes is required separately, because, in fact, their interests are often opposite; and for a voluntary agreement, which is to bind the minority, every interest should be represented.

until four weeks after the Commissioners shall have sent notice to the Bishop for his observations and opinion, unless he shall sooner signify his approbation, (28). Although the main principle of the Act is a commutation for rent-charge, yet with a view to give facilities for acquiring and enlarging glebe, twenty acres of land may, in the case of ecclesiastical tithe, be set apart instead of an equivalent value of rent-charge. In case the value of the tithes of the whole parish be more than that of the twenty acres, the residue will be made up in rent-charge, to be apportioned among all the landowners, unless otherwise specially agreed, (29, 30, 31.)* The confirmation of the commissioners completes the first part of the process, and the sum thus agreed upon is thenceforward fixed on the parish.

CLAUSES XXXII.—XXXV.

APPORTIONMENT BY THE LAND-OWNERS AMONG THEIR RESPECTIVE LANDS OF THE TOTAL SUM AGREED FOR.

The total sum having been voluntarily agreed upon, the next step is to apportion it among the individual landowners. For this purpose the landowners are to meet again to choose valuers. The tithe-owners are not to attend this meeting, because they have no interest in this part of the question, beyond seeing that their rent-charge is properly secured; and this security will be insured without their interference in the choice of valuers, by the subsequent provisions for a

* The exception will be useful, because a large landowner will often consent to give the land, on condition of his lands being freed, and it may be the interest of all parties to agree to this.

public discussion of the apportionment, and by a clause which comes late in the Act, (58,) providing that no close is to be charged with the rent-charge due upon any other lands unless it is of three times the value of such rent-charge.

The valuers, if more than one, are to be two or any other *even* number, half to be chosen by a majority of landowners in point of number, the other half by a majority in point of interest, or both majorities may agree to name the same person, (32.) The same meeting of landowners is to settle the principles according to which the valuers are to proceed, or if they are left uncontrolled by any rules so laid down for their guidance, they are to distribute the whole charge according to the best of their judgment, "having regard to the average titheable produce and productive quality of the lands;" subject, however, in every case to the following provision:—that all the lands are to have the full benefit of any modus or exemption attaching to them. In many cases where the exemption is complete or the modus general, this provision will be of very easy application; in other cases, where the modus covers only particular kinds of produce, an estimate must be made of the value of that privilege. If any lands are covered by a modus of so peculiar a character that this estimate is rendered difficult, previous application should be made to the commissioners for permission to treat those lands as a distinct parish for the purpose of the Act, (12.) The valuers are to subscribe a declaration that they will act faithfully, and to appoint an umpire before they proceed to business, (33.) They have the power of entry, (34,) and of using old maps, which

they are bound to adopt by the directions of three-fourths of the landowners, (35). If any person thinks himself unfairly treated by the apportionment, he will have an opportunity of making objections to an assistant-commissioner, as provided at Cl. 61.

CLAUSES XXXVI.—LII:

COMPULSORY AWARD BY THE COMMISSIONERS OF THE TOTAL RENT CHARGE IN DEFAULT OF VOLUNTARY AGREEMENTS.

The commutation based upon a voluntary agreement having been brought to that stage at which the whole charges have been distributed among the lands liable to it by valuers chosen by the landowners, and proceeding according to the principles most in favour with them, the Act next takes up the question of commutation on the supposition that no voluntary agreement has been made.

After 1st October, 1838, the commissioners may proceed to direct the necessary inquiries for a compulsory commutation in any parish in which no voluntary commutation has at that time been effected. It may be taken for granted that the commissioners, in the exercise of a sound discretion, will avoid interference in those cases in which the parties appear to be on the point of agreement without them, and an express power is given to them of suspending their proceedings even after commencing them, if there should be indications of the probability of voluntary agreement. It may also be expected that after this period has elapsed, the knowledge that the commissioners may be called in at any moment will greatly expedite the completion of agreements without their

assistance, (36.) The foundation of the Commissioners' award in an ordinary case is to be the amount of the compositions paid, or of the value of the tithes taken in kind, during seven years ending at Christmas 1835. Where abatements have been made upon tithe-rents, or compositions, on the ground of their being higher than the fair composition value of the tithes, the abated amount is to be the basis of the rent-charge. The rent-charge is to be subject to all parochial and county rates, and consequently, when the compositions have been paid free of such charges, an equivalent to what they would have paid had they been rated, is to be added to the composition before the rent-charge is calculated, (37.)*

The commissioners are to be empowered—in case the payments of the last seven years are appealed against by the patron or by half the land-owners, or the tithe-

* The reasons for this are many, although the plan of making the rent-charge free of rates and taxes appear at first sight to have the advantage of simplicity.

1. The poor-rates during the last seven years have been much higher than they probably will be again, and it would be manifestly unjust to reduce the rent-charge permanently on a calculation founded on these extravagant payments. An attempt to allow for the probable reduction of poor rates and county rates would lead to endless disputes.

2. Many rates are unequal, or even illegal, and it would be necessary to institute an inquiry into them which would open a new source of quarrel, not necessarily belonging to the subject.

3. It would soon become an invidious thing that the tithe-owner should not contribute his share to the burdens of the parish: not only would he be debarred from interfering in parochial affairs while his indemnity should last, but in the end, the recollection of the terms on which he purchased it might become weak, and he might eventually be called upon, notwithstanding, to contribute like his neighbours.

owners, great or small, upon the ground that the seven years' average would not be a fair basis for commutation,—to increase or diminish the average sum so ascertained to an extent not exceeding one-fifth, or twenty per cent. The reason has been already pointed out why an appeal is allowed separately to the owners of the great and small tithes. A still wider latitude is allowed to the commissioners in cases of fraud or collusion, or in those which, owing to special circumstances, ought in their judgment to be separately treated. But in all such cases they are to report to Parliament before the 1st May, 1838, how their discretion is to be exercised, (38.)

The cases so reserved for special adjudication are to be reported to the Secretary of State, and they are confined in the exercise of this discretion to the fixing of the rent-charge with regard to the average of the neighbouring parishes. The draft of the award, with so much of the report to the Secretary of State as relates to the special cases, is to be deposited in the parish for the purpose of some commissioner or assistant-commissioner hearing and determining objections to the award in such cases, (39.)

The tithe of hops, fruit, and garden produce, if the owner thereof shall give notice that they should be separately valued, is to be awarded in every case according to the average of some district to be fixed by the commissioners, (40.) This tithe does not fall within the provisions of the 38th clause, which contain the power to vary by one-fifth the average value, as ascertained by the 37th clause.

The tithe of wood may be also excepted upon notice, either from its owner, or the tithe-owner, and

is to be estimated according to its value at the last cutting, and according to the value of similar woods in that part of the country during seven years ending Christmas 1835, (41.)

The tithe of hop grounds and market gardens is to be divided into two parts, ordinary and extraordinary, and the lands which go out of cultivation are to be relieved from the extraordinary charge, which is to be imposed on such as are newly cultivated,* (42.)

The tithe of land converted from barren heath, and which shall have been exempted on that account during any part of the seven years from tithe, or which (under peculiar circumstances of occupation) may have been entitled to exemptions, such as glebe and the like, is upon a similar notice from landowner or tithe-owner, to be estimated according to the average of lands of the like description and quality in the parish and neighbourhood, (43.)

Moduses and the like are to be taken at their actual amount, the only change being that they will be called rent-charges instead of moduses, and will vary henceforth with the price of corn. If established by any decision during the seven years, the rent-charge will be according to the decision. So if any moduses have been set aside during the seven years, the rent-charge will not be fixed on the modus, but upon the principles of the decision, (44.)

The clauses from 44 to 48 inclusive give the commissioners and assistant-commissioners power to settle

* This clause was first introduced by the hop growers, who were alarmed at having to pay the hop tithe in competition with future growers upon new land who would only pay the ordinary arable or pasture tithe. It is obvious that if they are to be relieved on the one hand they must be liable to an additional burden on the other.

disputed claims, which shall be a hinderance to their making such award of the total rent-charge, (45,) subject to appeal in all cases exceeding 20*l.* in value to a court of law, in the mode pointed out by the Act, (46, 47, 48,) but in no case is the effect of the statutes of limitations as they regard tithes to be affected, (49.)

When the award is drawn up, which in the particulars it contains will be similar to a voluntary agreement (except that the commissioners cannot award the twenty acres of land allowed to be included in a voluntary agreement) (50), an assistant-commissioner will publish a copy of it in the parish, and sit on an appointed day to hear objections to it. If any objections be deemed valid, the proposed award is to be amended accordingly, (51.) *

When the award has been examined, and if necessary, amended, it will be sent to London, for the approval of the Central Board; and this approval, as in the case of a voluntary agreement, renders the proceedings so far settled and binding upon all persons then or thereafter interested in the lands or tithes, (52.)

CLAUSE LIII.

VOLUNTARY APPORTIONMENT BY THE LANDOWNERS OF THE TOTAL RENT-CHARGE COMPULSORILY AWARDED.

The award being confirmed, and the process so far completed, the voluntary principle is again resorted

* This provision of course is not necessary in the case of the voluntary agreement, because in that the representatives of the only three parties interested will be agreed, and no one of the three can make a disadvantageous bargain for his neighbour, not being a party to the agreement, which will not also be injurious to himself, since the agreement only relates to the total sum, and not to its final distribution among the tithe-payers.

to, and an assistant-commissioner will summon a meeting of landowners to choose valuers, exactly as they would have done if the sum awarded had been voluntarily agreed upon, (53.)

CLAUSE LIV.

COMPULSORY APPORTIONMENT BY THE COMMISSIONERS.

If a voluntary agreement or compulsory award has been made, but has not been followed by a voluntary apportionment in six months, the commissioners are empowered to proceed to a compulsory apportionment. The observation before made applies here, that the activity of the voluntary process will probably be much increased by the knowledge that the commissioners may thus interpose, (54.)

CLAUSES LV. LVIII.—LXVIII.

PROVISIONS APPLICABLE TO EVERY APPORTIONMENT.

The Act having now brought down the process of commutation to the same stage, on the three different suppositions,—

1. Of a voluntary agreement and voluntary apportionment;
2. Of a compulsory award and voluntary apportionment;
3. Of a compulsory apportionment following a voluntary agreement or compulsory award,—

The following provisions are applicable to every commutation taken up at this stage.

The form of the apportionment is pointed out (55), which is made to include the agreement or award on which it is founded, and is to set forth all the lands referred to, and the amount charged on each. On the request of any landowner the sum charged on his

lands may be differently apportioned amongst them, but so that no lands shall be charged on account of other lands to the extent of more than one-third of its value, (58.) When made, the draft of the apportionment is to be annexed to the award of the total sum, and sent to the Central Board, (60.) After its receipt, a meeting, as in the case of an award, is to be held in the parish, and a commissioner or an assistant-commissioner will sit in the parish to hear and determine objections to it, (61.) Moreover, if any landowner should then wish to commute the rent-charge for land with any ecclesiastical titheowner, he may do so, the limit of twenty acres being still preserved, (62.) The apportionment, after all these proceedings are disposed of, is then to be sent, engrossed on parchment, with the map or plan annexed, to the commissioners, who, on approval, are to confirm the same under their hands and seal, (63.) Copies are to be deposited in the parish, and sent to the registrar of the diocese; (64.) and in every case, before confirming any agreement, award, or apportionment, if the commissioners think fit, notice is to be given to remainder-men and reversioners, (65.) After these proceedings have been completed, and the agreement, award, or apportionment is confirmed, it is not to be questioned, (66,) but the lands are to be discharged for ever from tithes, and the rent-charge paid instead. No person is to be personally liable for the rent-charge, (67,) the sole mode of recovery being by distress and entry (given by Clauses 84, 85). When lands are given for tithes or rent-charge, the lands in the parish are discharged from tithes and rent-charge for which such land shall have been given, (68.)

To prevent disputes, the power of entry is given by Clause (59) to the valuers employed by the commissioners, their pay being limited to two guineas a day, or the commissioners may agree on a fixed sum for their payment.

CLAUSES LVI. LVII.* LXVII.

CONVERSION OF THE MONEY RENT-CHARGE INTO A CORN RENT-CHARGE.

The rent-charge being fixed and apportioned, these clauses provide for its varying from year to year, with the price of wheat, barley, and oats, ascertained by the weekly returns of the prices of grain under 9th Geo. IV. c. 60, for the purpose of regulating the duty, (56.)

The principle is, that after having ascertained how many bushels of corn could be bought with the amount of rent-charge, one-third being converted into wheat, one-third into barley, and one-third into oats, at the average price of the seven years next preceding Christmas 1835, (57,) those quantities of grain are to be considered as the permanent rent-charge, and their money value is to be paid every year at the average price of the seven years, ending at each preceding Christmas. This price will therefore vary every year, by taking in a year at the end and dropping one at the beginning of each period of seven years, (67.)†

* These two clauses (56, 57) are misplaced in the Act, as appears upon this Analysis. This was discovered during the progress of the Bill; but as the error was unimportant, and there were so many material alterations to be made, it was judged better not to remove them.

† For a short mode of calculating the variations of rent-charge under the Act, see Note at the end of the Act.

CLAUSES LXIX.—LXXI.

LIABILITY OF RENT-CHARGE TO THE SAME RATES AND
INCUMBRANCES AS TITHES.

The principle on which the rent-charge is made subject to parochial rates and charges of the like kind, (69,) has been explained in considering Clauses 36 to 52. (See note, page xxi.)

Following the precedent of the Income Tax, these rates are made assessable on the actual occupier of the lands out of which the rent-charge issues, although payable by the owner of the rent-charge; with power for the occupier paying, or on whom the same may be levied (not being the owner of the rent-charge,) if only a tenant, to deduct the amount from his rent; or otherwise recover the same from his landlord—and for the landlord or occupier, if also the owner of the land, to deduct the amount from the owner of the rent-charge in settling accounts with him.* A power of inspecting and calling for copies of the rates is given to the owner of the rent-charge; who, knowing his liability, can appeal against the rates at any time, (70,) as if he were the person assessed.

The rent-charges are made subject to the like charges, and similar remedies are given as existed with respect to the tithes for which they were commuted, such as mortgages, and the like.

Doubtful mortgages, &c. are excepted, to avoid giving validity to such charges, as, for instance, cases where clergymen cannot legally mortgage their livings.

* But for this provision, there would be no summary power of recovering the rates, as there is nothing tangible in the rent-charge which could be distrained on; and the owner of it, in many cases, would not be resident, or have goods and chattels in the parish.

The rent-charge, if held for life, or greater estate, is declared a freehold, and is made subject to the like liabilities, incidents, and exemptions, as tithes.

Provision is also made for extending the principle of this Act, to tithes authorized to be disposed of under former Acts of Parliament, or to the rent-charges for which these tithes have been or may be commuted. The rent-charges are not to merge in the estate out of which they issue, except when held by tenants in fee-simple or fee-tail; who, of course, may deal with them like other property held in fee, and, if they see fit, may declare them merged before the intervention of the commissioners, and so, by extinguishing them, withdraw them from the operation of this Act, (71.)

CLAUSE LXXII.

PROVISION FOR FUTURE ALTERATION OF APPORTIONMENT.

Without this provision, (72), every foot of land would be subject to the whole rent-charge fixed upon the estate of the landowner, at the time of the commutation. With tithes, each portion of land has its tithe attached to it; but the rent-charge issues out of the lands generally: and, by virtue of this provision, any landowner can discharge such portion as he may wish to sell, provided the residue of his land left charged with the rent-charge, be of the value required by Section 58, *i. e.* three times the value of the rent-charge. As this is a power which may be exercised long after the period of the commission, its due execution is intrusted to two justices, and the Commissioners of Land-Tax, who exist in every locality, following the precedent of the Property-Tax Commissioners,

who were selected from the same body. The landowner, by these means, can, at any time, so alter the apportionment as to sell the greater part of his land free of rent-charge. It is, in effect, an imperfect power of redemption.

The mode of apportionment is as nearly as may be the same as that required for the original apportionment, and due notice of it is to be sent to the persons with whom the original instrument of apportionment is deposited.

CLAUSES LXXIII.—LXXVIII.

EXPENSES OF COMMUTATION; BY WHOM TO BE PAID, AND HOW RECOVERED.

The expenses of witnesses, production of books, &c., of settling suits and differences, and determining objections, are to be paid by the parties interested, as the commissioners may direct, (73.)

The expenses of surveyors, and of making an award, (not ordered by the commissioners, or any court, to be otherwise paid), are to be borne by the landowners and titheowners jointly, as the commissioners may direct, (74.)

The expenses of apportionment are to be borne proportionally by the landowners alone, who are the only parties interested in this part of the commutation, (75.)

These expenses, if not paid, are in every case to be recovered by a justice's warrant, (76.)

If to be borne by a land or titheowner, not having an absolute estate in fee, power is given to charge the lands or rent-charge with the expenses and interest at four per cent., so that the whole be paid off by annual instalments in twenty years, (77.)

Ecclesiastical owners may charge the amount of the expenses and interest at four per cent. in like manner on their benefices for twenty years, following the precedent of loans under Queen Anne's bounty fund;* but in the latter case, to prevent error, the amount is to be ascertained, and certified by the Commissioners, (78.)

CLAUSES LXXIX. LXXX.

PROVISIONS FOR TENANT PAYING THE RENT-CHARGE.

As there may be cases where the tenant dissents from the commutation, although the landlord, as owner of the lands, may agree or be compelled to commute, the landlord, where such a commutation has been effected against the wishes of his tenant, is substituted for the titheowner, during such tenant's term, and may take tithes instead; and the tenant, whether paying tithes in kind or a composition at the passing of this Act, will not be damaged otherwise than by the change of the party to whom his payments will be made, for he will be entitled to deduct the rent-charge, which he will pay in addition to his tithe, from his rent.

Notice of the dissent is to be given in writing, to the landlord or his agent, (79.)

Every tenant so notifying his dissent, and every tenant who may hold his lands tithe-free, or who may pay the rent-charge at any time, due upon lands which he shall take after the passing of the Act, is, upon making such payment, allowed to deduct the amount in account with his landlord for rent, (80.)

* By the Statute for regulating of Queen Anne's bounty fund, the loans are to be repaid by annual instalments of not less than one-twentieth, with interest from time to time:]

This last provision secures the terms on which lands will be let for the future.

CLAUSES LXXXI.—LXXXV.

REMEDIES FOR RECOVERY OF RENT-CHARGE BY DISTRESS AND ENTRY.

If the rent-charge be unpaid for twenty-one days, power is given to distrain, after ten days' notice, as in case of distress for common rent; but the arrears that can be recovered are limited to two years, (81.)

Following the example of re-entry by a landlord, in case the rent be not satisfied by the distress, a power to enter is given after forty days' arrear; but instead of the tedious process of an ejectment, a cheaper remedy is substituted, as any judge, on affidavit of the arrears being due, may order a writ to be issued, directed to the sheriff, to inquire and assess what is due; and on the return of the inquisition, a writ of *habere facias possessionem* may issue, as on an ordinary judgment, (82.)

The land may be held by the owner of the rent-charge till the arrears and costs, as also the cost of cultivation, be satisfied. On this being done, or whenever the landowner thinks fit, he can call for an account, by a judge's order, (which may be obtained by summons in the usual way before a judge in chambers,) and on the account being rendered, and amount of arrears and expenses satisfied, possession may be regained by issuing a writ of *supersedeas* to the writ of possession, the surplus being also paid to the owner of the rent-charge, (83.)

In the case of Quakers, it is not necessary to impound the distress, which may be made on their goods and chattels, whether on the premises or not, and no

entry is to be made unless the owner of the rent-charge is unable to find sufficient distress for the arrears and costs, (84.)

The distress and entry is to extend to all lands in the parish held under the same landlord by the occupier of the lands liable to the rent-charge,—a provision necessary to avoid frauds in shifting distresses, &c. &c. But no lands are to be liable for rent-charge due on lands washed away by the sea, or destroyed by any natural casualty; (85) such lands and its owners being altogether discharged, as no owner, by Clause 69, is personally liable for the rent-charge, and the only remedies of distress and entry are lost with the land.

CLAUSES LXXXVI.—XCVII.

MISCELLANEOUS.

CLAUSE LXXXVI.

RENT-CHARGES TO BE APPORTIONED ON DEATH OR REMOVAL, &c.

The Act 4 & 5 Wm. IV. c. 22, as to apportionment of rents, directs they shall be divided between heirs and executors, or incumbents vacating a living, and their successors, by proportions according to the length of time in possession, &c. These provisions are extended to the rent-charges under this Act, (86.)

CLAUSE LXXXVII.

SALE OF TITHE BARN.

Buildings heretofore used for housing tithes being rendered useless by the commutation, are authorized to be sold, the proceeds to be applied for the benefit of the owner of the rent-charge, as the commissioners may direct, (87.)

CLAUSE LXXXVIII.

LEASES OF TITHES MAY BE SURRENDERED.

Lessees in *occupation* of tithes commuted under this Act are empowered to surrender their leases, and the commissioners may direct what, if any, compensation should pass between the lessor and lessee; but it is to be noticed, that the compensation to be given by any immediate lessor is confined to lessees at rack-rent, otherwise it would imply a return of fines, which would be manifestly unjust. On the other hand, any lessee, whether at rack-rent or not, is liable to pay compensation if he avail himself of this clause, and throw up his lease. If the rent extend to other matters, *e. g.* land and tithes together, the rent is to be altered in proportion. Any intermediate lessor to whom a lease is surrendered, is to have the like power with regard to his lessor, (88.)

CLAUSE LXXXIX.

RESERVATION OF RIGHT TO TITHE ALREADY DUE.

The operation of the Act begins on the first day of January following the day on which the commutation shall be completed. Up to such period the tithes will be payable, (89.)

CLAUSE XC.

EXCEPTIONS OUT OF THE ACT.

The Act is not to extend to the following matters, unless there be a special provision for its so extending in any voluntary agreement, approved by the commissioners, in which case they may be included.

1. Easter offerings, mortuaries, and surplice fees,
2. Fish or fishing.
3. Personal tithes, except mills.

4. Mineral tithes.

5. Tithes in London.

6. Permanent rent-charge, or payments in lieu of tithes, calculated on rents of houses or lands, in any city or town under local acts or custom.

7. Lands or tenements of which the tithes are already perpetually commuted or extinguished by Act of Parliament.

The exceptions are grounded, for the most part, on the general principle, that there is no land on which to charge the commutation. An attempt was made for the same reason to except the tithes of milk and calves, not produced on lands of which the tithe has been commuted, but this exception was finally rejected. The consequence will be, that the value of these tithes will be taken account of with the rest, and it will be for the landowners to consider according to what principles the resulting rent-charge shall be apportioned.

CLAUSE XCI.

EXEMPTIONS FROM STAMP DUTY.

Advertisements, agreements, awards, and powers of attorney, made, confirmed, or used, under the Act, are not chargeable with stamp duty.

CLAUSE XCII.

EXEMPTION FROM POSTAGE.

The correspondence of the commissioners is postage free, if it relate solely to the execution of the Act.

CLAUSE XCIII.

PENALTIES FOR FALSE EVIDENCE, OR SUPPRESSING EVIDENCE.

Persons *wilfully* giving false evidence are to be deemed guilty of perjury;

Persons subscribing a false affidavit or declaration are to suffer penalties of perjury ;

And persons refusing to give evidence, or withholding same, destroying papers, &c. are to be deemed guilty of misdemeanor.

CLAUSE XCIV.

LIMITATION OF ACTIONS AND PROTECTIONS.

The protections to commissioners and others acting under this Act are—

1. Twenty-one days' notice, in writing, of intention to bring action or suit.

2. The opportunity to tender satisfaction or amends.

3. The actions must be brought within three months from the cause of complaint, and the venue must be laid in the county where the complaint arose.

4. Defendant, if issue be favourable to him, to have full costs, (94.)

CLAUSE XCV.

The proceedings are not to be quashed for informality, or to be removable by *certiorari*.

CLAUSES XCVI. XCVII.

The Act is limited to England and Wales, (96.) and may be altered or repealed during the present session, (97.)

AN ACT, &c.

6 & 7 WILL. IV. c. 71.

An Act for the Commutation of Tithes
in *England* and *Wales*.

[13th August, 1836.]

WHEREAS it is expedient to amend the laws relating to tithes in *England* and *Wales*, and to provide the means for an adequate compensation for tithes, and for the commutation thereof; **BE IT THEREFORE ENACTED**, by the

King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same,

That it shall be lawful for one of His Majesty's principal Secretaries of State to appoint two fit persons to be Commissioners to carry this Act into execution, and for the Archbishop of *Canterbury*, under his hand and archiepiscopal seal, to appoint one fit person to be a Commissioner to carry this Act into execution, and for the said Archbishop and Secretary of State, at their joint pleasure, to remove any one or more of the Commissioners so appointed; and upon every vacancy in the office of Commissioner some other fit person shall be appointed to the said office in the same manner and by the same authority as the Com-

Appointment of
Commissioners.

missioner whose vacancy is thereby supplied ; and until such appointment it shall be lawful for the continuing commissioners or commissioner to act as if no such vacancy had occurred.

Style of Commissioners.

2. And be it enacted, that the said commissioners shall be styled "*The Tithe Commissioners for England and Wales,*" and shall have their office in *London* or *Westminster*, and they, or any two of them, may sit from time to time, as they deem expedient, as a board of commissioners for carrying this Act into execution ; and the said commissioners shall cause to be made a seal of the said board, and shall cause to be sealed or stamped therewith all agreements and awards confirmed by the said commissioners in pursuance of this Act ; and all such agreements and awards and other instruments proceeding from the said board, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received in evidence without any further proof thereof ; and no agreement or award shall be of any force unless the same shall be sealed or stamped as aforesaid.

To have Common Seal.

Awards, &c. purporting to be sealed with Seal of Commissioners, to be received as Evidence.

Commissioners to report to Secretary of State.

3. And be it enacted, that the said commissioners shall from time to time give to any one of His Majesty's principal secretaries of state such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require, and shall once in every year send to one of the principal secretaries of state a general report of their proceedings ; and every year such general report shall be laid before both Houses of Parliament within six weeks after the receipt of the same by such principal secretary of state, if Parliament be sitting, or if Parliament be not sitting, then within six weeks after the next meeting thereof ;

Annual Report to be laid before Parliament.

4. And be it enacted, that it shall be lawful for the commissioners, from time to time, to appoint a sufficient number of persons to be assistant commissioners, and also a secretary and assistant secretary, and all such clerks, messengers, and officers as they shall deem necessary, and to remove such assistant commissioners, secretary or assistant secretary, clerks, messengers or officers, or any of them, and on any vacancy in any of the said offices to appoint some other person to the vacant office; and the persons so appointed shall assist in carrying this Act into execution at such places and in such manner as the said commissioners may direct: Provided always, that the said commissioners shall not appoint more than twelve such assistant commissioners to act at any one time, unless the lord high treasurer, or any three or more of the commissioners of His Majesty's treasury, shall, in the case of each such appointment, consent thereto: Provided further, that the number of such clerks, messengers, and officers shall be subject to the like consent.

Power to appoint and remove Assistant Commissioners, Secretary, Assistant Secretary, Clerks, and other officers.

5. And be it enacted, that no commissioner or assistant commissioner appointed as aforesaid shall during his continuance in such office be capable of being elected or of sitting as a member of the House of Commons.

No Commissioner or Assistant Commissioner to sit in the House of Commons.

6. And be it enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so to be appointed, shall hold his office for a longer period than five years next after the day of the passing of this Act, and thenceforth until the end of the then next Session of Parliament; and after the expiration of the said period of five years and of the then next Session of Parlia-

Operation of Act as to appointment of Commissioners, &c. limited to Five Years.

ment so much of this Act as authorizes any such appointment shall cease.

Salaries of, and Allowances to Commissioners and Assistant Commissioners, Secretary and other Officers.

7. And be it enacted, that the salaries of the commissioners, the allowance to the assistant commissioners, and the salaries of the secretary, assistant secretary, clerks, messengers, and other officers to be appointed under this Act, shall be from time to time regulated by the lord treasurer or the lords commissioners of His Majesty's treasury, or any three of them: Provided always, that the salary of a commissioner shall not exceed the sum of one thousand five hundred pounds a year, nor the allowance to an assistant commissioner the sum of three pounds for every day that he shall be actually employed or travelling in the performance of the duties of his office, nor the salaries of the secretary or assistant secretary the sum of eight hundred pounds a year; and that the salaries of the clerks, messengers, and other officers shall be in fit proportion: Provided also, that the said lord treasurer or lords commissioners may allow to any commissioner, assistant commissioner, secretary, assistant secretary, clerk, messenger, or other officer, any such reasonable travelling and other expenses as may have been incurred by him in the performance of his duties under this Act, in addition to his salary or allowance respectively.

Treasury may allow Travelling and other expenses.

Such Salaries, Allowances, and other Expenses, to be paid out of Consolidated Fund.

8. And be it enacted, that the salaries, allowances, and travelling and other expenses of the commissioners, assistant commissioners, secretary, assistant secretary, clerks, messengers, and officers as aforesaid, and all other incidental expenses of carrying this Act into execution, not herein otherwise provided for, shall be paid by the lord treasurer or the lords commissioners of His Majesty's treasury out of the consolidated fund.

9. And be it enacted, that every such commissioner and assistant commissioner shall, before he shall enter upon the execution of his office, take the following oath before one of the judges of His Majesty's courts of King's Bench or Common Pleas, or one of the barons of the court of Exchequer; (that is to say,)

'I A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfil all the powers and duties of a commissioner [or assistant commissioner, as the case may be,] under an Act passed in the year of the reign of King William the Fourth, intituled [*here set forth the title of this Act*].'

And the appointment of every such commissioner and assistant commissioner, with the time when and the name of the judge or baron before whom he shall have taken the oath aforesaid, shall be forthwith published in the *London Gazette*.

10. And be it enacted, that the said commissioners, or any assistant commissioner, may, by summons under their or his hand, require the attendance of all such persons* as they or he may think fit to examine upon any matter brought before them or him as hereinafter mentioned relating to the commutation of tithes, and also make any inquiries and call for any answer or return as to any such matter, and also administer oaths, and examine all such persons upon oath, and cause to be produced before them or him upon oath all books, deeds, contracts, agreements, accounts and writings, terriers, maps, plans, and surveys, or copies thereof respectively, in anywise relating to any such matter:

* See the 93d clause for penalties on wilful disobedience to summons, withholding or suppressing evidence, altering or destroying books, papers, and the like.

No person required to travel more than ten miles.

Provided always, that no such person shall be required, in obedience to any such summons; to travel more than ten miles from the place of his abode, or to produce any deeds, papers; or writings relating to the title of any lands or tithes.

Commissioners may delegate powers to Assistant Commissioners, except powers to be exercised under their seal.

11. And be it enacted, that the said commissioners may delegate to their assistant commissioners, or to any one or more of them, such of the powers hereby given to the said commissioners as the said commissioners shall think fit, (except the power to confirm agreements and awards, or to frame forms of agreements and other instruments, as hereinafter provided, or to do any Act herein required to be done under the seal of the said commissioners,) and the powers so delegated shall be exercised under such regulations as the said commissioners shall direct; and the said commissioners may at any time recall or alter all or any of the powers delegated as aforesaid, and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and all Acts done by any such assistant commissioner in pursuance of such delegated powers shall be obeyed by all persons as if they had proceeded from the said commissioners, and the non-observance thereof shall be punishable in like manner.

Acts of Assistant Commissioners to be obeyed as if proceeding from Commissioners.]

Meaning of the words
"Person,"
"Lands,"
"Tithes,"
"Parish,"

12.^b And be it enacted, that in the construction and for the purposes of this Act, unless there be something in the subject or context repugnant to such construction, the word "Person" shall mean and include the King's Majesty,

^b The interpretation clauses, 12 to 16 inclusive, must be referred to in construing every part of the Act. If any one doubt whether his case be provided for or not, he must refer to these clauses, which are made applicable to male and female, singular and plural, and the like, in order to avoid repetitions in the Act.

and any body corporate; aggregate; or sole, as well as an individual; and any word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse; and any word importing the masculine gender only shall mean and include a female as well as a male; and the word "Lands" shall mean and include all messuages, lands, tenements, and hereditaments; and the word "Tithes" shall mean and include all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real, and prescriptive and customary payments; and the word "Parish" and "Parochial" shall mean and include and extend to every parish and every extra-parochial place, and every township^a or village, within which overseers of the poor are separately appointed under the provisions of an Act passed in the thirteenth and fourteenth years of the reign of His late Majesty King Charles the Second, intituled *An Act for the better Relief of the Poor of this Kingdom*, and every district of which the tithes are payable under a separate impropriation or appropriation, or in a separate portion or parcel, or which the commissioners shall by any order direct to be considered as a separate district for the commutation of tithes;^d and the words "Land Owner" or

"Parochial,"
"Land-
Owner,"
"Tithe-
Owner,"
as used in this
Act.

Townships
under 13 & 14
Car. 2. c. 12.

^a The townships here referred to are chiefly met with in the north of England, and fall under the class to which the 13th and 14th Car. 2, cap. 12, applies.

^d By this extension of the word Parish, any peculiarity or extent of district or place may become the subject of a separate commutation, at the discretion of the commissioners; as, for instance, any part of a parish separated from the rest of the parish, or any peculiar jurisdiction, or lands subject to peculiar modes of tithing, which do not apply to the rest of the parish, and which might occasion difficulties in the apportionment; but such districts can only be separated from the rest of the parish by the express directions of the Commissioners, to whom application should be made, stating the peculiarities on which the application is founded.

"Tithe Owner," or "Owner of Lands" or "Owner of Tithes," shall mean and include every person who shall be in the actual possession or receipt of the rents or profits of any lands or tithes, (except any tenant for life or lives, or for years, holding under a lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and except any tenant for years whatsoever holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from the commencement thereof,) and that without regard to the real amount of interest of such person; and in every case in which any tithes or lands shall have been leased or agreed to be leased to any person for life or lives, or for years,

* Tenants at a rent of two-thirds of the clear yearly value of any tenements are generally considered to be tenants at the rack, or improved rent, whose interest being temporary does not entitle them to be considered as owners. Tenants for a term of less than fourteen years, at any rent, are of the same description.

The great point is to obtain the consent of those who represent the owner's interest for the time being; few consents could be obtained if the particular interest of each owner were matter of inquiry in each case of parochial agreement.

* Tenants at less than rack-rent, and for a term of more than fourteen years, who have, in fact, the interest of the owners during their term, whether for life or years, are here allowed to join in the agreement for commutation, as if they were owners; but as their lessors, who are, in fact, the reversioners, have also an interest, which ought to be represented, a joint ownership is here declared between them. There may be cases, as in some dean and chapter's leases, where there may be a series of tenants between the original lessor and the tenant at rack-rent. In such cases, upon the principle of the singular extending to the plural, each lessor and lessee falling within the definitions of this clause, and not included in its exceptions, would be deemed a joint owner. It is to be recollected that, in cases of this kind, a fine is generally paid, and hence the lessee is, *pro tanto*, a purchaser and owner. In these cases the concurrence of all such parties is necessary to constitute an owner, or the consent, &c. will not be duly given.

by any lease or agreement for a lease on which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person who shall for the time being be in the actual receipt of the rent reserved upon such lease or agreement for a lease shall, jointly with the person who shall be liable to the payment of such rent of such tithes or lands, be deemed for the purposes of this Act to be the owner of such tithes or lands; and in every case in which any person shall be in possession or receipt of the rents or profits of any tithes or lands under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person against whom such writ shall have issued, or who but for such order would have been in possession, shall, jointly with the person in possession by virtue of such writ or order, be deemed for the purposes of this Act to be the owner of such tithes or lands.

Where Parties
to be deemed
Joint Owners.

13. And be it enacted, that whenever the ownership of any lands or tithes to which the provisions of this Act are intended to apply shall be vested in His Majesty, the first commissioner of His Majesty's woods, forests, and land revenues for the time being, or in case such lands or tithes shall be vested in His Majesty in right of the Duchy of *Lancaster* or of the Duchy of *Cornwall*, the Chancellor of the Duchy of *Lancaster*, or the officers of the Duchy of *Cornwall*, entitled to grant leases of lands parcel of the Duchy of *Cornwall*,^a shall for the purposes of this Act be substituted instead of the owner of such lands or tithes respectively; and whenever

When Ownership of Lands or Tithes or Patronage is vested in the Crown, who to be deemed the Owner or Patron.

^a 1 and 2 W. 4. cap. 5.

the patronage of any benefice to which the provisions of this Act are intended to apply shall be vested in His Majesty, the lord high treasurer or first lord commissioner of the treasury for the time being, where the value of such benefice is above the yearly value of twenty pounds in the King's books, and where such value is of or below the yearly value of twenty pounds in the King's books, the lord chancellor or lord keeper or first lord commissioner of the great seal for the time being, shall for the purposes of this Act be substituted instead of the patron: Provided nevertheless, that if such patronage is vested in His Majesty in right of the Duchy of *Lancaster*, the Chancellor for the time being of such Duchy shall for the purposes of this Act be substituted instead of the patron.

When the same Person is Owner of Lands and Owner of Tithes, or Patron, he may be dealt with in each character.

14. And be it enacted, that whenever any person shall be at the same time owner of any lands and owner of any tithes comprised within any agreement to be executed pursuant to the provisions of this Act, or besides being owner of any lands or of any tithes, shall also be patron of the benefice to which the tithes in question may belong, such person, in relation to such agreement, may act and be dealt with in each of the several characters so borne by him as aforesaid.¹

In case Patron or Owner is under legal disability, who to act.

15. And be it enacted, that whenever the patron of any benefice, or the owner of any lands or tithes to which the provisions of this Act are intended to apply, or any person interested in any question as to any tithes, shall be a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, husband, or

¹ That is, his consent reckons in each majority, or as patron, or all, as the case may be.

attorney respectively, or in default thereof such person as may be nominated for that purpose by the commissioners, after due inquiry shall have been made by them as to the fitness of such person, and whom they are hereby empowered to nominate under their hands and seal, shall for the purposes of this Act be substituted in the place of such patron, owner, or person so interested.^k

16. And be it enacted, that it shall be lawful for any landowner or titheowner, by a power of attorney given in writing under his hand, to appoint an agent to act for him in carrying into execution the provisions of this Act; and all things which by this Act are directed to be done by or with relation to any person, may be lawfully done by or with relation to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement, and to vote on any question arising out of the execution of this Act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof authenticated by the signature of two credible witnesses,^l shall be appended to every agreement

Agent may be appointed by Power of Attorney to carry provisions of Act into] execution.

Principal bound by acts of such Agent.

^k The power here given to the commissioners will apply to a very numerous class of cases, where there is no *legally appointed* guardian.

^l The agent should keep the power for future occasions, and append an attested copy to the agreement; this power, which is sufficiently short and simple to be written on half a sheet of letter paper, is exempt from stamp duty. (See Clause 91.) The form does not require an attestation, but as it is possible the commissioners might think one necessary, it would be safer to have the signature witnessed by some person (not the wife of the party giving the power), who should add his or her occupation and address in the usual way.

executed by any such agent, and shall be sent with it to the office of the commissioners as hereinafter provided; and any such power of attorney may be in the form following:

Form of Power. 'I *A. B.*, of, &c. do hereby appoint *C. D.* of, &c. to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of an Act passed in the sixth and seventh years of His present Majesty, intituled [*here insert the title of this Act.*]
(Signed) *A. B.*'

Parochial Meetings may be called, at

17.^m And be it enacted, that any one or more of the landowners or titheowners, whose interest

* This is the first clause enabling parties to set the Act in motion. Any person in a parish (according to the definition of parish in Clause 12), who may wish to commute as soon as the Act has passed, must, if his own interest in the land or tithes does not amount to so much, obtain the assent of as many of his neighbours as will make their joint interest amount to one-fourth of the value in lands, or of the great and small tithes added together, to join him in signing the notice here required for calling a general meeting of landowners and titheowners, with a view to effect the commutation. The notice must remain fixed for twenty-one days on the church doors, or some other public place for giving notice in the parish; and also be advertised in a county paper, the expense of which must be borne by the persons calling or attending the meeting. Any agreement made at this meeting, or at some adjournment of it, must be signed by the persons having two-thirds interest in the lands, two-thirds in the great tithes, and two-thirds in the small tithes; and if not signed at the meeting, it may, by the 18th clause, be signed within six months afterwards; and when so signed it becomes an agreement for the commutation, which binds the rest of the parish. The forms of this notice would obviously be very simple; but as, by the 22d clause, the commissioners are to frame and circulate forms, it will be the safest way to wait till their forms be framed.

The term "parochial agreement" is used throughout the Act, as denoting an agreement under the voluntary system. In the Bill originally introduced, there was a power for individuals to commute, but it will here be seen that no commutation can be effected except by a whole parish or district, as defined in Clause 12; nor can a commutation

respectively shall not be less than one-fourth part of the whole value of the lands subject to tithes, or one-fourth part of the whole value of the tithes of any parish in *England* or *Wales*, may call a parochial meeting of landowners and tithe-owners within the limits of the parish, by notice thereof in writing under his or their hand, to be affixed at least twenty-one days before such meeting on the principal outer door of the church, or in some public and conspicuous place within the limits of the parish, and to be twice at least during such twenty-one days inserted in some newspaper generally circulated in the county in which such parish is situated, for the purpose of making an agreement for the general commutation of tithes within the limits of such parish; and every landowner and titheowner attending such meeting shall bear his own expenses of attendance; and the landowners and titheowners who shall be present at any such meeting called as aforesaid, and whose interest in the lands and tithes of the parish respectively shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes and two-thirds of the small tithes of the parish, may proceed to make and execute a parochial agreement for the payment of an annual sum by way of rent-charge, variable as hereinafter provided, instead of the great and small tithes of the parish collectively, or instead of the great tithes and small tithes severally, to the respective

which Owners of Two-thirds in value of lands and tithes may agree on the total sum to be paid to the Tithe Owners, which Agreement shall bind the whole Parish. Twenty-one days' notice of meeting to be given, and to be twice advertised.

Expenses to be borne by parties attending Meeting.

be effected of the great tithes alone, or of the small tithes alone. Both must be included, although the agreement may treat them both collectively, and fix one sum for both united, where both, for instance, belong to the same titheowner, or where the meeting agrees that it should be so; or the agreement may provide that one sum be paid for great tithes, and another for small tithes, where they belong to different titheowners, or where the meeting think it desirable to have the two rent-charges kept distinct.

owners thereof in the said parish; and every agreement so made and executed, and confirmed in manner hereinafter mentioned, shall be binding on all persons interested in the tithes or lands subject to tithes of the said parish.

Provisional
Agreements
may be made^o
at the Parochial
Meetings,

18. And be it enacted, that the majority of such landowners and titheowners present at every such meeting shall elect a chairman, who shall forthwith proceed to ascertainⁿ the interest of the landowners and titheowners then present in person or by their agents; and in case it shall thereupon appear that the persons present at such meeting have not a sufficient interest in the premises as aforesaid to make and execute such an agreement which shall be binding on all persons interested therein, it shall be lawful notwithstanding for any number of the persons then present to make and execute a provisional agreement for the commutation of tithes of the like form and tenor; and every such provisional agreement which shall be executed within six calendar months from the day^o of the first making thereof by the landowners and titheowners whose interest in the lands and tithes of the parish shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes and two-thirds of the small tithes of the parish respectively, shall be as binding as if executed by all the parties thereto at the meeting at which the agreement was first made.

to be binding if
executed within
six months.

Proportional
interest in

19. Provided always, and be it enacted, that the proportional interest of the owners of such

ⁿ It is advisable that the chairman should certify, in writing, that the interest has been duly ascertained, and the certificate should be annexed to the agreement, and so transmitted with it to the commissioners. It will be seen by the next clause that this interest is to be ascertained by the poor-rate.

^o That is the day of the first signature being attached. See Clause 21.

lands or tithes,^p so far as relates to their power to make any such agreement or provisional agreement, or to give any notice to the commissioners or assistant commissioners as herein-after provided, shall be estimated according to the proportional sum at which such lands or tithes shall be rated to the relief of the poor, or, if there shall be no such rate, according to the rules by which property of the same kind is by law ratable to the relief of the poor.

Lands and Tithes, how to be estimated for the purposes of this Act.

20. And be it enacted, that in case an adjournment of the said meeting for any cause shall be desired by a majority of the persons attending such meeting, the chairman shall adjourn the meeting to any time^q and place then by him to be declared, and so from time to time, in case the same shall be in like manner desired by a majority of the persons attending such meeting; and notice of every adjourned meeting shall be given under the hand of the chairman, and shall be affixed in a conspicuous place on the outside of the building in which such meeting or the last adjournment thereof shall have been holden; and the like order of proceeding shall be observed at any such adjourned meeting, and every thing done at any such adjourned meeting shall be as valid as if done at the original meeting.

Meeting may be adjourned.

Notice of adjournment.

21. And be it enacted,^r that every such agreement shall bear date on the day on which

Form of Parochial Agreement.

^p It will be convenient at every parochial meeting to have the poor-rate books, and put the assessment of each person present opposite to his name in the minutes of the parochial meeting, and opposite his signature to the agreement, and to add a memorandum of the total amount of assessment of the titheowners and landowners subject to tithes.

^q The twenty-one days' notice is not necessary in the case of an adjourned meeting, as the chairman may adjourn to any time, and so may adjourn to another hour in the same day, if the meeting see fit.

^r The form will be supplied by the commissioners, but it

the¹ first signature is attached thereto, and every such agreement or some schedule thereunto

is of great importance to see that all the requisites of this clause are complied with: They are—

1. Date of first signature to agreement.
2. Particulars of land subject to tithes.
3. Their statute measure.
4. Their mode of culture.
5. Whether subject to any, and what moduses, &c., and the lands covered thereby.
6. To distinguisha between great and small tithes.
7. And in what right each titheowner claims.
8. Exemptions and particulars of land exempt.*
9. Gross amount, in words at length, of proposed rent-charge for tithe.
10. The like for moduses, &c. if any.
11. Distinguishing the amount on every parcel of land payable to each titheowner. †
12. The amount payable in different rights to the same owners.
13. Or such other particulars as the commissioners shall direct.

Nor must the parties to the agreement omit the ordinary points required in a document of this importance—such as the duly signing it; specifying whether the party signing be a landowner or titheowner; what his proportion of interest is, &c. The agreement should also purport to be between the several parties required by the Act, and that it is made under its provisions, *e.g.* An agreement for the commutation of the tithes of the parish of Z, made this — day of — in the year of our Lord —, between A. B. being the owner of not less than two-thirds in value of the great tithes of the parish of Z, of the first part, C. D. being the owner of not less than two-thirds in value of the small tithes of the same parish, of the second part, and the several landowners whose interests, as set forth opposite their respective signatures hereto, amount to not less than two-thirds in value of

* As where the titheowner occupies the titheable lands, in which case the value of the tithes must be calculated as if taken in kind; and the like in the case of glebe, whilst in the hands of an incumbent, or other cases of entire or partial exemption. See Clauses 24, 33, 42, 43, 44, and four following clauses, where these moduses and exemptions are protected.

† These several distinctions are intended to meet the several cases of great or small tithes, portions of tithes, and the like.

annexed shall set forth all the lands of the said parish which are² subject to the payment of any kind of tithes, and also the true or estimated quantity in statute measure³ of land subject to tithes within the parish, which shall be then cultivated⁴ as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise; and shall also set forth whether any modus⁵ or composition real, or prescriptive or customary payment, shall be payable instead of all or any of the tithes of the said parish, and which lands or tithes respectively are covered thereby; and shall also set forth which of the said tithes, moduses, compositions, or payments are payable to the titheowner, or if there is more than one titheowner⁶ to each of the several titheowners in the said parish, distinguishing⁷ in what right every such titheowner is entitled to such tithes, and shall also set forth whether any and which of the lands of the said parish are or have been under any and what circumstances⁸ exempt from the payment of any and what tithes; and such agreement shall also state in⁹ words at length the amount of the sum or sums agreed to be paid (subject to variation as hereinafter provided) instead of the tithes of the lands comprised in the said agreement, and instead of all moduses¹⁰ and compositions real, prescriptive and customary payments (if any), payable in respect of such lands, or the produce of such lands or any of them; distinguishing, if there is more than

the lands subject to tithe in the said parish, of the third part. The agreement would then set forth that it is made under the provisions of this Act—that the meeting has been duly called by landowners or titheowners of one-fourth interest in the lands or tithes in the parish, that it was duly advertised, and otherwise duly appointed, and the respective interests of the parties duly estimated and ascertained, according to the proportional sum in which such tithes or lands are rated (or liable to be rated, as the case may be) to the relief of the poor in the said parish, &c.

one titheowner, the sum payable¹¹ to every such titheowner, and where the tithes of different lands in the same parish are payable to different titheowners, or to the same titheowner¹² in different rights, distinguishing the sum payable in respect of such different lands; and every such agreement shall also state¹³ all such other particulars as the commissioners shall by any order from time to time require to be inserted in such agreements.

Commissioners to frame and circulate Forms of Agreements, &c. to Churchwardens and Overseers, requiring same.

22. And be it enacted,* that the commissioners shall frame and cause to be printed, as soon as conveniently may be after their appointment, forms of notices and agreements, and such other instruments as in their judgment will further the purposes of this Act, and supply all or any of such forms to the churchwardens and overseers of any parish who may require the same, or to whom the commissioners may think fit to send the same, for the use of any landowner or titheowner desirous of putting this Act into execution.

Commissioner or Assistant Commissioner may attend to advise terms of Agreement.

23. And be it enacted, that any commissioner, or assistant commissioner, if the commissioners shall think fit, may attend any such meeting for the purpose of taking part in the discussion and advising on the terms of agreement; but no commissioner or assistant commissioner, during the time that he is actually attending such meeting for that purpose, shall have any of the powers herein given to the commissioners in case of an award or apportionment by the commissioners as hereinafter provided.

* By the 92d clause, letters sent for the purposes of this Act may go free of postage. The applications for forms, it will be observed, must be made through the parochial authorities, and the letters must be directed to "The Tithe Commissioners for England and Wales, London."

24. And be it enacted,[†] that if any suit shall be pending touching the right to any tithes, or if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability to tithes, under any circumstances, in respect of any lands or any kind of produce, or touching the situation or boundary of any lands; or if any difference shall arise, whereby the making and executing of any such agreement shall be hindered, it shall be lawful for the owners, or, if there shall be no owner actually in possession, for the persons claiming to be the owners of the lands and tithes respectively, being parties to such suit or difference, to submit the same to reference by any writing under their respective hands, containing an agreement that such submission shall be made a rule of any of His Majesty's courts of record, upon such terms of reference as the parties may agree upon; and the decision of the arbitrator or arbitrators named in the said reference shall for the purposes of this Act be final and conclusive on all persons: Provided nevertheless, that no person, being owner of an estate in land or tithes, less in the whole than an immediate estate of fee-simple or fee-tail, shall be empowered to submit to any such reference so as to bind any person in remainder, reversion, or expectancy without the consent of the commissioners; and that it shall be lawful for the commissioners, if they shall think fit so to do, but

Suits and differences may be referred to Arbitration.

Submission to reference of Persons not having Estate in fee, not binding on Reversioner without consent of Commissioners.

[†] This clause relates to all cases of disagreement or dispute pending between landowners and titheowners at the passing of the Act, and will enable the disputing parties to refer their suits and differences at once to arbitration. The proviso puts the commissioners in the place of the reversioner, in case he be not a party to the suits, leaving it in their discretion whether he shall be made a party to the reference or not.

Reversioner,
&c. to be made
a party if the
Commissioners
see fit.

not otherwise necessary, to direct that any person in remainder, reversion, or expectancy of an estate of inheritance in the said lands or tithes, or any other person whom they shall deem to be interested therein, shall be made a party to such reference.

Agreements
pending at the
time of the
passing of this
Act, if com-
pleted and con-
firmed by the
Commissioners,
to be as valid as
parochial
Agreements.

25. And be it enacted,^u that every agreement for the commutation for a rent-charge of the tithes of any lands which shall be pending at the time of the passing of this Act, and which shall be executed before or within six calendar months after the passing of this Act, by the landowners and titheowners, or persons claiming to be such owners, whose interest in the said lands and tithes shall not be less than two-thirds of the said lands, two-thirds of the great tithes, and two-thirds of the small tithes of the said lands, and which shall be confirmed by the commissioners, under their hands and seal, in the manner hereinafter provided for the confirmation of any parochial agreement, shall be as valid, and the rent-charge agreed to be paid by any such agreement shall be apportioned and charged, as hereinafter provided, among and upon the said lands, as if the agreement had been made and executed at a parochial meeting.

Consent of
Patron to be

26. Provided always,^v and be it enacted, that in every case in which any tithes shall belong to

^u This clause places pending agreements on the footing of provisional agreements, and makes them binding in like manner when confirmed by the commissioners. This and the preceding clause will cover every case of difference where tithes or rent-charges are in question. The great advantage of these provisions is, that they will save the cost of private Acts of Parliament for enabling persons, under legal disabilities, to make such agreements.

^v This consent is rendered necessary to prevent improvident bargains by those who have a mere temporary interest in the tithes. (See also Clause 28.)

any ecclesiastical person in right of any spiritual dignity or benefice, no agreement for the commutation of such tithes made and executed under this Act shall be deemed to be executed by the owner of such tithes, unless such consent thereto be given as is hereinafter mentioned; (that is to say,) in the case of an archbishop or bishop, the consent of the Crown, signified by the lord high treasurer or first lord commissioner of the treasury; and in case of the incumbent of any other benefice or ecclesiastical dignity, the consent of the patron or person entitled to present to such benefice or dignity, in case the same were then vacant; and every such consent shall be given under the hand of the person giving the same, and shall be annexed to the agreement, and taken to be part of the execution thereof.

given to every
Agreement for
Commutation
of Ecclesias-
tical Tithe.

27. And be it enacted, that every such agreement,* as soon as may be after it shall have been executed by a sufficient number of landowners and titheowners whose interest in the lands and tithes of the parish respectively shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes, and two-thirds of the small tithes, shall be sent by the chairman of the meeting, or by the person in whose custody it shall then be, to the office of the commissioners, and the commissioners, by themselves, or by some assistant commissioner, shall cause inquiry to be made, and shall require such proof as will be satisfactory to them, whether or not the agreement has been made without fraud or

Agreement to
be confirmed
by the Com-
missioners,

on proof that
it is made with-
out fraud or
collusion.

After the agreement is fully signed, no time should be lost in forwarding it for confirmation, so as to enable the commissioners to make inquiries, and obtain evidence of the fairness of the agreement, according to the provisions of this clause; until confirmation the agreement is of no force. After confirmation the valuation and apportionment take place under Clauses 33 and 34

collusion, and whether or not it ought to be confirmed; and if they shall be satisfied that it ought to be confirmed, the commissioners shall confirm the agreement under their hands and seal, and shall add to such agreement the date of the confirmation, and shall publish the fact of such confirmation and the date thereof within the parish, in such manner as to them shall seem fit; and every such confirmed agreement shall be binding on all persons interested in the said lands or tithes.*

Before Confirmation of Agreement as to Ecclesiastical Tithes, notice to be sent to the Bishop.

28. Provided always, and be it enacted, that before the commissioners shall confirm any such agreement relating to tithes belonging to any ecclesiastical person in right of any spiritual dignity or benefice, they shall communicate the same to the bishop of the diocese for his observations and opinion; and no such agreement shall be confirmed by such commissioners until four weeks shall have elapsed from the date of the transmission of such agreement to such bishop, unless the said bishop shall sooner signify his approbation of such agreement to the said commissioners.

Parochial agreement may

29. And be it enacted,^y that any such parochial agreement may be made in manner and form

* This includes persons in reversion, remainder or expectancy, and makes the agreement final and conclusive. By Clause 65, the commissioners may give notice to the reversioners, and remainder-men, or other interested persons, if they see fit.

^y This provision has been introduced to enable any incumbent to add twenty acres to his glebe. But it is to be observed that such an agreement in this stage of the commutation must be *parochial*, that is, made with the consent of all the parties to the agreement, and not a mere private arrangement with an individual; and the residue of the rent-charge, after deducting the rent-charge value of the twenty acres, must be apportioned over all the other lands in the parish except the land so given to the incumbent, unless the parties provide in the agreement for a

aforesaid for giving to any ecclesiastical owner, in right of any spiritual benefice or dignity, of any tithes, or of any rent-charge for which such tithes shall have been commuted, any quantity not exceeding in the whole twenty imperial acres of land, by way of commutation for the whole or an equivalent part of the great or small tithes of the parish, or in discharge of or exchange for the whole or an equivalent part of any rent-charge agreed to be paid instead of such tithes, but subject in every case to the provisions hereinafter contained; and every such agreement shall be made in such form and contain such particulars as the commissioners shall in that behalf direct, specifying the land whereof the tithes or rent-charge for which such tithes shall have been commuted shall be the subject of such agreement, and giving full and sufficient descriptions of the quantity, state of culture, and annual value of the land proposed to be given in exchange for such tithes or rent-charge: Provided always, that the same consent and confirmation shall be necessary to any such agreement as in the case of an agreement for a rent-charge; and that in case the said agreement shall not extend to the whole of the tithes of the parish, an agreement or award as hereinafter provided may and shall be made for the payment of a rent-charge

be made for giving twenty acres of land to Ecclesiastical Titheowner, by way of Commutation.

Particulars to be specified in such Agreement.

different kind of apportionment; as, for instance, when the parish agree that any one or more of the landowners may give the lands, &c., but still so as to keep the twenty acres so given free of rent-charge.

Lay-impropriators are not included in this provision, but left to their rights, as they may exist independent of the Act.

The form of the agreement is left to the commissioners, whose consent and confirmation are essential to its validity; and by the following clause it will be seen that they must be satisfied of the title and every other particular so as to ensure a fair agreement, and all the costs are to be borne by the landowner.

The twenty acres must be of Imperial measure, and in no case exceed that number.

in satisfaction of the residue of the said tithes ; and such rent-charge when agreed upon or awarded, or the residue thereof, shall be apportioned, in manner hereinafter provided, upon all the lands of the parish subject to the payment of tithes, unless otherwise agreed upon by the parties to the said parochial agreement, except the land so given by way of commutation, in like manner as if no agreement for giving land had been made : Provided also, that the land so given shall be free from incumbrances, except leases at improved rent, land tax, or other usual outgoings, and shall not be of leasehold tenure, nor of copyhold or customary tenure subject to arbitrary fine or the render of heriots.

Commissioners
to satisfy them-
selves of Title,
&c.

30. And be it enacted, that in every case in which any such agreement for giving land shall be so entered into, the commissioners shall satisfy themselves in such way and by such evidence as they shall see fit, of the title to the land proposed thereby to be given in exchange for such tithes or rent-charge, and that the same are of the description and value set forth in such agreement, and that such agreement is conformable in every respect to the provisions hereinbefore contained respecting the same ; and the expense attending every such agreement for giving land and the confirmation thereof, and of investigating the title to the land, shall be borne by the owners of land liable to the payment of tithes within the parish, in such proportions as they may agree, or in default of agreement, as the commissioners may direct.

Expense to be
borne by Land-
owners.

Agreement for
Land when

31. And be it enacted,² that such agreement

² The expense of a conveyance is saved by this clause, but the agreement is not binding till confirmed ; the clause also declares the uses of the agreement by making them of the like nature with the tithes or rent-charge for which the land is given.

for giving land, confirmed by the said commis- confirmed to
sioners, shall operate as a conveyance of such operate as Con-
land to the owner of such tithes or rent-charge, veyance to like
and the land so conveyed shall thereupon vest uses as Tithes
in and be, and be deemed to be, holden by such or Rent-charge.
person or persons, and upon the like uses and
trusts, in every respect, as the tithes or rent-
charge in commutation or exchange for which
the same shall have been given shall be vested
and holden ; and for the purpose of making and
completing any such agreement, the provisions
of this Act respecting persons under legal dis-
ability shall apply to every person, party to such
agreement, or in whom any such land shall be
vested, and whose concurrence or consent may
be necessary to the perfecting thereof, or of the
title to such land, as fully as if the same had
been here repeated and re-enacted.

32. And be it enacted,^a that at the said Appointment
meeting, or at some adjournment thereof, or at of Valuers by
Landowners.

^a The gross amount of rent-charge having been agreed on by the landowners and titheowners jointly, the landowners are empowered to choose a valuer, or any even number of valuers, to apportion this amount amongst themselves, but the concurrence of two majorities is necessary to this appointment; one in respect of the number, and the other in respect of the interest of the landowners. The titheowners have no such interest in this apportionment as to make their interference or concurrence necessary. It was suggested during the discussions upon the Bill, that if the landowners and titheowners agreed without the intervention of valuers, the delay and expense consequent on the appointment might be saved ; but as the minority in the parish who are not parties to the agreement are still bound by it, it is essential that some competent valuers should be chosen who can determine or give evidence of the propriety of the apportionment, and of the fidelity of the map or plan to be annexed to the latter. It would be proper to have this appointment of the valuers in writing, and the majorities duly ascertained by a minute of those present at the meeting, and of their rated rental as appearing by the poor-rate under Clause 19. If in six months the valuation and apportionment shall not be completed by valuers so chosen, the commissioners may apportion. (See Clause 54.)

some other parochial meeting to be called in like manner, either before or after the confirmation of the agreement, the owners of lands subject to tithes in the said parish, or their agents present at the meeting, may appoint a valuer or valuers; and in case the majority in respect of number and the majority in respect of interest shall not agree upon the appointment, then they shall appoint two or such other even number of valuers as shall be then agreed on by such landowners; half of such number to be chosen by a majority in respect of number, and the other half by a majority in respect of interest of such landowners then present.

Valuers to
apportion the
Rent-charge.

33. And be it enacted, that as soon as may be after the choosing of such valuer or valuers, and after the confirmation of the said agreement, the valuer or valuers so chosen shall apportion^b

^b No apportionment can be made but by the valuers duly appointed, or the commissioners when their interference is necessary; but the meeting may determine the principle on which the valuers are to proceed. It has been objected to in former plans of commutation, that they fixed an occupier of highly cultivated land with a high tithe, and the reverse. By this provision, which brings not only the titheable produce, but the productive quality of the land, before the notice of the meeting or valuers, the apportionment may be taken with perfect fairness to all, and equalize the tithe according to what the land is capable of producing throughout the whole parish; *e. g.* Suppose the gross rent-charge or tithe has been agreed upon at 500*l.* per annum, the parish has to find this amount for the titheowners, and the valuers may, under the direction of the landowners, allot to each a proper quota, according to the fair average titheable value of his land,—no matter what may be the nature of the tithe to which it may be at that time liable. The landowners can also, if they please, relieve the poorer tithe-payers, by ascertaining the amount of the tithes payable by them, and add them to the gross amount of tithes; as also the Easter offerings, mostuarles, and surplice fees, under a special provision to that effect if they see fit, such a power being reserved in Clause 90. The few pounds paid for this kind of tithes, though important to the poorer clergy, whose income often depends on these

the total sum agreed to be paid by way of rent-charge instead of tithes, and the expenses of the apportionment, amongst the several lands in the said parish, according to such principles of apportionment as shall be agreed upon at the meeting at which the valuer or valuers shall be chosen; or if no principles shall be then agreed upon for the guidance of the valuer or valuers, then, having regard to the average titheable produce and productive quality of the lands, according to his or their discretion and judgment, but subject in each case to the provisions hereinafter contained, and so that in each case the several lands shall have the full benefit of every modus^c and composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable: Provided that it shall be lawful for the said valuers, when an even number is chosen, by any writing under their hands, to appoint an umpire^d before they proceed upon the business of such apportionment, and the decision of the umpire on the questions in difference^e between the valuers

According to principles agreed on by Landowners, or having regard to Produce and quality of Lands.

Moduses and Exemptions to be respected.

Umpire may be appointed.

tithes, and often giving rise to unpleasant disputes, would not be felt when thus apportioned over the whole parish.

^c That is, the proportion of rent-charge on lands entitled to a modus will be calculated on the money value of the modus. There are some shifting moduses which will form the subject of an average; as, *e. g.* where land pays a modus whilst in pasture, but becomes subject to tithe if broken into tilth. (See also Clause 44.)

^d The umpire must be appointed in the first instance, or the valuation, in case of disputes, would be void. But although so appointed it is not necessary he should act, unless a dispute really arise; and it would be good ground of appeal against the costs of the valuation if the umpire were to act, unless a cause for his acting really arise.

^e If the valuers do not complete their work in six months, the commissioners may then interfere and effect an apportionment. (See Clause 54.)

shall be binding on them, and shall be adopted by them in the apportionment.

Valuers may enter on Lands for the purpose of valuing Tithes.

To subscribe Declaration before acting.

34. And be it enacted, that the said valuers and umpire (if it shall become necessary for him to act), and their agents or servants, at all reasonable times, may enter upon any of the lands to be included in the apportionment, and make an admeasurement, plan, and valuation of the same, without being subject to any action or molestation for so doing: Provided always, that no valuer or umpire shall be capable of acting until he shall have made and subscribed before the said commissioners, or some assistant commissioner or justice of the peace,^f a solemn declaration to the same purport and effect as the oath hereinbefore directed to be made by the said commissioners, substituting only the proper description of such person instead of the word commissioner, and adding to his signature the usual place of his residence; which declaration it shall be lawful for the said commissioners or any assistant commissioner or justice to administer; and every such declaration so made and subscribed shall be countersigned by the person before whom the same shall have been made, and shall be sent by him to the office of the commissioners.

Old Plans and Surveys may be used, if the Valuers think proper.

35. And be it enacted, that the valuer or valuers or umpire may, if they think fit, use for the purposes of this Act any admeasurement,

^f This declaration must be made before acting; any thing done previously to the declaration being made would be void: the declaration would be in the same form as the oath, substituting the words "solemnly declare" for the word "swear;" and the words "valuer or umpire" (as the case may be) for "commissioner;" and instead of the caption saying "taken before me," it should be, "the above declaration was made by the above-named A. B. before me," &c. (See form, Clause 9.)

plan, or valuation previously made of the lands or tithes in question, of the accuracy of which they shall be satisfied; and that it shall be lawful for the meeting at which such valuer or valuers shall be chosen to agree upon the adoption, for the purposes aforesaid, of any such admeasurement, plan, or valuation; and such agreement shall be binding upon the valuer or valuers: Provided always, that three-fourths of the landowners in number and value shall concur therein.

And if three-fourths of the Landowners concur,

36.^a And be it enacted, that after the first day of *October* one thousand eight hundred and thirty-eight, the commissioners shall proceed in manner hereinafter mentioned, at such time and in such order as to them shall seem fit,ⁱ either by themselves or by some assistant commissioner, to ascertain and award the total sum to be paid by way of rent-charge instead of the tithes of every parish in *England* and *Wales* in which no such agreement binding upon the whole parish as aforesaid shall have been made and confirmed as aforesaid: Provided nevertheless, that if any proceeding shall be had towards making and

After 1st of October, 1838, Commissioners may ascertain total value of Tithes in any Parish in which no previous Agreement made.

To refrain from acting if notice

^s It is not imperative on the valuers to use these plans unless they be placed in their hands by the meeting, with instructions for their adoption.

^a The 36th to the 52d clauses empower the commissioners to make a compulsory award, in case no voluntary agreement has been made before the 1st October, 1838. The effect of these clauses is to enable the commissioners to act as the land and titheowners might have done by their voluntary agreement; but the proviso enables the commissioners to refrain from acting, if a voluntary agreement be preferred after they have commenced compulsory proceedings.

ⁱ It is a part of the commissioners' positive duties to take these compulsory proceedings in every parish where a voluntary agreement shall not have been made previous to 1st October, 1838, although the time of acting after that day is optional with them.

given of intention to make Agreement.

executing any such agreement after the commissioners shall have given, or caused to be given, notice of their intention to act as aforesaid in such parish, the commissioners may refrain from acting upon such notice if they shall think fit, until the result of such proceeding shall appear.

Value of Tithes to be calculated upon an average of Seven Years preceding Christmas 1835.

37.^k And be it enacted, that in every case in which the commissioners shall intend making such award, notice thereof shall be given in such manner as to them shall seem fit; and after the expiration of twenty-one days after such notice shall have been given, the commissioners, or some assistant commissioner, shall, except in the cases for which provision is hereinafter made, proceed to ascertain the clear average value (after making all just deductions on account of the expenses of collecting, preparing for sale, and marketing, where such tithes have been taken in kind,) of the tithes of the said parish, according to the average of seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five:^l Provided, that if during the said period of seven years, or any part thereof, the said tithes

If compounded or demised,

^k The advantage of the voluntary agreement consists in its allowing the land and titheowners to settle the amount to be paid and apportioned in any way they please. Hence the 37th and 38th clauses are only applicable to cases of compulsory commutation, unless the land and titheowners agree that the valuers shall adopt the same principle. But the commissioners, when their powers are called into action, are, in the first place, tied down to the principles of previous payments for the last seven years, whether they be high or low, with the power, reserved in the 38th clause, of increasing or decreasing such amount to the extent of one-fifth, or in special cases, or under circumstances of fraud or collusion, with power of alteration, having reference to the rent-charges paid in the neighbourhood. These latter powers, however, are only to be exercised in some way which the commissioners are bound previously to define, by rules to be laid before Parliament on or before the 1st of May, 1838. (See proviso to Clause 38.)

^l Christmas, 1835, is a fixed date anterior to the passing of the Act; and the object of thus fixing it is obvious.

or any part thereof shall have been compounded for or demised to the owner or occupier of any of the said lands in consideration of any rent or payment instead of tithes, the amount of such composition or rent or sum agreed to be paid instead of tithes shall be taken as the clear value of the tithes included in such composition, demise, or agreement during the time for which the same shall have been made;^m and the commissioners or assistant commissioner shall award the average annual value of the said seven years so ascertained as the sum to be taken for calculating the rent-charge to be paid as a permanent commutation of the said tithes: Provided also,

Composition or
Rent to be
taken as value
of Tithes.

^m As the singular imports the plural, this proviso will extend to cases of sub-demises to more than one party falling under the class of owner of the lands, or occupier; but the permanent rent-charge will be based on the arrangement subsisting between the actual occupier of the land, subject to tithe, and the titheowner who stands as actual occupier, or, as it were, landlord of the tithes. Thus, if A. lets the tithes to B., who takes in kind, the rent-charge will be based on the tithes as so taken; but if B. be the occupier, or being the landowner shall sub-let them to his tenants, or compound, at a given sum, the rent on the sub-letting or the composition will be the basis of the rent-charge. Again, if A., the tithe-owner, let to B., the landowner, who lets his land tithe-free, the rent paid by B. to A. will be the basis for the commutation: as the principle of the provision is, that what the titheowner has been *bonâ fide* content to take, or the landowner or occupier has been content to pay for the last seven years, may fairly be presumed to represent the agreed, and hence substantial, value of the tithes, as they immediately affect or press upon the land. It is important to bear this in mind, and also to observe, that the rent for which tithes are compounded imports the rent or composition due from the immediate tithe-payer; otherwise, in a succession of demises, there would be more rent-charges than one, or it might be urged that the nominal rent in a college or chapter lease, where a fine has been paid, is to be the basis of the commutation. If, however, a fine and nominal rent has been paid by the actual occupier of the land, and in any case a question should arise on the application of this clause, the spirit of the Act would seem to require that the value of the fine paid should be converted into an annuity payable during the lease, and with the annual rent, estimated as the real rent paid.

Proviso for Reduction where Abatement has been made on account of Composition being above real value.

Tithes to be valued without deduction on account of Parochial and County Rates.

Power to alter Averages on Appeal.

that whenever it shall appear to the commissioners that the party entitled to any such rent or composition shall in any one or more of the said seven years have allowed and made any abatement from the amount of such rent or composition, on the ground of the same having in any such year or years been higher than the sum fairly payable by way of composition for the tithe, but not otherwise,ⁿ then and in every such case such diminished amount, after making such abatement as aforesaid, shall be deemed and taken to have been the sum agreed to be paid for any such year or years: Provided also, that in estimating the value of the said tithes the commissioners or assistant commissioner shall estimate the same, without making any deduction therefrom on account of any parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable; and whenever the said tithes shall have been demised or compounded for on the principle of the rent or composition being paid free from all such rates, charges, and assessments, or any part thereof, the said commissioners or assistant commissioner shall have regard to that circumstance, and shall make such an addition on account thereof as shall be an equivalent.^o

38.^p Provided always, and be it enacted, that in case notice in writing under the hand

ⁿ Abatements from mere compassion to the insolvency or distress of the tithe-payer are not included in this provision.

^o This provision is founded on the principle, that the composition which was agreed to be paid clear of rates would have been increased by the amount of those rates, if it had been liable to them. For instance, if the rates were 1s. in the 1l., and the composition had been 190l. free from rates, it is plain that the real composition, subject to rates, was 200l.

^p The provisions of Clauses 38 and 39, for making alterations in the amount of the average value, are discretionary

of any patron, or the hands of any landowners or titheowners whose interest in the lands or tithes of the parish shall not be less than one-half of the lands subject to tithes, one-half of the great tithes or one-half of the small tithes of the parish, shall be given to the commissioners or assistant commissioner acting in that behalf, within one calendar month next after the notice of the intention to make an award shall have been given as aforesaid, that the average value to be ascertained as aforesaid will not fairly represent the sum which ought to be taken for calculating a permanent commutation of the great or small tithes of the said parish, the commissioners shall have power to diminish or increase the sum to be so taken by a sum amounting to not more than one-fifth part of the average value ascertained as aforesaid: Provided always, that every case which shall appear to the commissioners to be fraudulent or collusive, or which, by reason of the length of time which shall have elapsed since the making of any composition then in force, or which by reason of the peculiar interest in the lands or tithes of either of the parties to any composition, or by reason of any

Power to increase or diminish Average by one-fifth.

Certain cases may be reserved for Special Adjudication at discretion of Commissioners.

with the commissioners; but they can only be put in force in cases of compulsory awards of the total amount of rent-charge to be fixed on any parish. Any case of fraud or collusion in voluntary agreements is matter of inquiry by the commissioners before confirmation (Clause 27); and after such confirmation of either a voluntary agreement or compulsory award, all matters of objection will be confined to the apportionment, and will be disposed of accordingly. (See Clause 61.) Although these clauses do not come into operation before October, 1838, it will be desirable for any person interested in tithes to collect and preserve evidence of their value, for the purpose of being used as occasion may require; the average, in all cases, being confined to seven years, ending Christmas, 1835.

Commissioners
to Certify before
1st May, 1838,
how discretion
to be exercised.

other special circumstances, ought in the judgment of the commissioners to be separately adjudicated upon, shall be reserved for separate adjudication as hereinafter provided; and the commissioners shall certify and report to one of His Majesty's principal secretaries of state, under their hands and seals, before the first day of *May* in the year one thousand eight hundred and thirty-eight, in what manner the discretion hereby vested in them ought in their judgment to be exercised, and shall in the said report lay down such rules for the guidance of the assistant commissioners as may to them seem expedient, and such report shall be laid before Parliament within six weeks after the same shall have been received, or after the meeting of Parliament; and unless Parliament shall otherwise provide, such rules shall be observed by the said commissioners and assistant commissioners in the exercise of the discretion hereby vested in the commissioners.

Special Adjudi-
cations how to
be made; and
report of such
Cases to be
made to the
Secretary of
State.

39. And be it enacted, that the commissioners shall from time to time report to one of His Majesty's principal secretaries of state, under their hands and seals, all the cases which under the power hereinbefore reserved to them in that behalf shall have been reserved for separate adjudication, and shall state in every such report the reasons for so reserving every case mentioned therein; and the commissioners shall in every such case award the rent-charge to be paid as a permanent commutation for tithes, having regard to the average rate which shall be awarded in respect of lands of the like description and similarly situated in the neighbouring parishes: Provided always, that a draft of such intended award, with a copy of

so much of the said report as is applicable to such award, shall be deposited in the parish; and the commissioners, or an assistant commissioner to be specially appointed by the commissioners for that purpose, shall hear and determine all objections to the award in the like manner as is herein provided in an ordinary case of award, and the commissioners shall have power thereupon to amend the draft of the said award accordingly.

Award of such Cases to be deposited in the Parish.

40. And be it enacted,^a that in case any of the lands in the parish shall be hop grounds, orchards, or gardens, and notice shall be given by the owner thereof to the commissioners or assistant commissioner acting in that behalf that the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof according to the average rate of composition for the tithes of hops, fruit, and garden produce respectively, during seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five, within a district to be assigned in each case by the commissioners or assistant commissioner, and estimating the same as chargeable to all parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable, and shall add the value so estimated to the value of

How the Tithe of Hops, Fruit, and Garden produce is be valued.

^a As the whole rent-charge has been fixed by the commissioners, the owner of the hop grounds, orchards, and gardens, of which the tithes will probably be much higher than of ordinary lands or produce, is the party most interested in having provision made for a separate valuation, having a view to an alteration and reduction on change of cultivation, according to the provision of Clause 42. Hence it is on his notice that the commissioners are called on to interfere.

the other tithes of the parish ascertained as aforesaid.

How the Tithe
of Coppice
Wood is to be
valued.

41. And be it enacted,^r that in case any of the lands in the parish shall be coppices, and notice shall be given by the owner thereof, or by the owner of the tithes thereof, to the commissioners or assistant commissioner acting in that behalf, that the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof with a due regard to the average value, estimated according to the best of their judgment, of coppice wood of the same kind cut during the said period of seven years in that parish and the neighbouring parishes, estimating the same as chargeable to all parliamentary, parochial, county and other rates, charges, and assessments to which the said tithes are liable, and shall add the clear value of the tithes so estimated to the value of the other tithes of the parish ascertained as aforesaid; and the commissioners shall, in the report which they are hereinbefore required to make to one of His Majesty's principal secretaries of state before the first day of *May* in the year one thousand eight hundred and thirty-eight, lay down rules for the guidance of the assistant commissioners in estimating the value of the tithes of coppice wood, and unless Parliament

Clause 38.

^r In the case of coppice wood, it may happen that no cutting has taken place, or tithe accrued, for seven years. In that case, it is the interest of the titheowner to call for a separate valuation. Or there may have been a cutting in the seven years, amounting to more than a fair average, according to the custom of cutting. In this latter case, the tithe-payer is interested in having a separate valuation. Either land or titheowner may therefore call for a separate valuation under this clause.

shall otherwise provide, such rules shall be observed by the said commissioners and assistant commissioners.

42. And be it enacted,* that the amount which shall be charged by any such apportionment, as hereinafter provided, upon any hop grounds or market gardens in any district so to be assigned, shall be distinguished into two parts, which shall be called the ordinary charge and the extraordinary charge, and the extraordinary charge shall be a rate per imperial acre, and so in proportion for less quantities of ground, according to the discretion of the valuers or commissioners or assistant commissioner by whom the apportionment shall be made as aforesaid; and all lands whereof the tithes shall have been commuted under this Act, and which shall cease to be cultivated as hop

Provision for the change of culture of Hop Grounds and Market Gardens.

* This provision for fixing an additional tithe on land newly brought into hop or garden cultivation, is applicable both to voluntary and compulsory cases; but it is evidently against the principle of the Bill, which is opposed to a tax on improvements, or a check on change of cultivation. Still without this provision, the old hop grounds and market gardens would remain charged with a high tithe, and thus the new would have a *quasi* monopoly. The subject involved considerable difficulty, for if the rent-charge on hops and gardens were simply based on the higher rate of tithe, to which they are liable, in comparison with the tithe of mere arable and pasture lands, the burthen would be out of all proportion on a change of cultivation; hence arose a necessity for a provision which would relieve hop grounds, and gardens from such a rent-charge; and it then became a matter of mere justice to make the provision extend to a change the other way.

The first part of this clause providing for two rates of charge, relates to hop grounds and market gardens within any district to be assigned by the commissioners under the 40th clause. The latter part of the clause relates to hop grounds, or market gardens, not comprised within any such district. And the provision for this extraordinary charge is limited to the duration of the commission. After the time fixed by the Act for the commission shall have expired, the extension or modification of this provision will rest with Parliament.

No additional amount to be charged during first year, and only half during second.

grounds or market gardens at any time after such commutation, shall be charged after the 31st day of *December* next following such change of cultivation, only with the ordinary charge upon such lands; and all lands in any such district the tithes whereof shall have been commuted under this Act, and which shall be newly cultivated as hop grounds or market gardens at any time after such commutation, shall be charged with an additional amount of rent-charge per imperial acre, equal to the extraordinary charge per acre upon hop grounds or market gardens respectively in that district: Provided always, that no such additional amount shall be charged or payable during the first year, and half only of such additional amount during the second year, of such new cultivation; and an additional rent-charge by way of extraordinary charge upon hop grounds and market gardens, newly cultivated as such beyond the limits of every district in which any extraordinary charge for hop grounds or market gardens respectively shall have been distinguished as aforesaid at the time of the commutation, shall be charged by the commissioners at the time of such new cultivation, upon the request of any person interested therein, if such new cultivation shall have taken place during the continuance of the commission of the said commissioners, and after the expiration of the commission shall be charged in such manner and by such authority as Parliament shall direct, and shall be payable and recoverable in like manner and subject to the same incidents in all respects as an extraordinary charge charged upon any hop grounds or market gardens at the time of commutation.

How exemp-
reason

43. And be it enacted, that in case any of the lands in the parish shall, during any part

of the said period of seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five, have been exempted from payment of tithes by reason of having been enclosed under any Act of Parliament, or converted from barren heath or waste ground,^t or by reason of being glebe lands^u or of having been heretofore parcel of the possessions of any privileged order,^v and notice shall have been given as last aforesaid to the commissioners or assistant commissioner acting in that behalf, that the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof according to the average value which shall be ascertained as aforesaid in respect of lands of the like description and quality in that parish and the neighbouring parishes, or as near thereto as the circumstances of each case may in their judgment require, and estimating the same as chargeable to all parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable, and shall add the value so estimated to the value of the other tithes of the parish ascertained as aforesaid.

^t Under 2 and 3 Ed. 6, cap. 13, sec. 5 and 6.

^u And hence discharged from tithes whilst in the hands of the incumbent.

^v For example, there are several tracts of land, formerly the property of the privileged orders of Cistercians and Hospitallers, which paid tithes whilst occupied by a tenant, but were exempt when held by the owners. This partial exemption is now the privilege of the present owners of these lands; and hence a special provision is necessary, in order to cover cases where the exemption has extended over the seven years, ending Christmas, 1835. But when valued, it will be found by the next clause, that due allowance must be made for the exemption by the commissioners; as, for instance, they might fix the rent-charge, and declare it payable like the tithes, only when the lands out of which the rent-charge issues are occupied by a tenant, but ceasing to be payable when occupied by an owner.

Moduses, &c. -
how to be
allowed for in
the Award.

Proviso as to
recent deci-
sions.

Commissioners
may hear and
determine
disputes.

44. And be it enacted,^w that if any modus or composition real, or prescriptive or customary payment shall be payable instead of the tithes of any of the lands or produce thereof in the said parish, the commissioners or assistant commissioner shall in such case estimate the amount of such modus, composition, or payment as the value of the tithes payable in respect of such lands or produce respectively, and shall add the amount thereof to the value of the other tithes of the parish ascertained as aforesaid, and shall also make due allowance for all exemptions from or non-liability to tithes of any lands or any part of the produce of such lands: Provided also, that if it shall appear to the said commissioners or assistant commissioner that any question concerning any modus or composition real, prescriptive or customary payment, or claim of exemption from or non-liability to the payment of tithes relating to the lands in question, shall have been decided by competent authority before the making of the said award, the commissioners or assistant commissioners shall act on the principle established by such decision, and shall make their award as if such decision had been made at the beginning of the said period of seven years.^x

45. And be it enacted,^y that if any suit shall be pending touching the right to any tithes, or

^w This clause is similar to the provision, with respect to moduses and the like, in the case of parochial agreements, Clauses 21 and 33.

^x Thus, if during the seven years a modus has been established, the award will take seven years' modus as the basis for the rent-charge to be apportioned on these particular lands; but if, on the contrary, a modus has been set aside, and the lands declared subject to tithes, then the average of seven years' value of tithes will be taken.

^y In the cases of voluntary agreements, the mode of ad-

if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability under any circumstances to the payment of any tithes in respect of any lands or any kind of produce, or touching the situation or boundary of any lands, or if any difference shall arise whereby the making of any such award by the commissioners or assistant commissioner shall be hindered, it shall be lawful for the commissioners or assistant commissioner to appoint a time and place in or near the parish for hearing and determining the same; and the decision of the commissioners or assistant commissioner shall be final and conclusive on all persons, subject to the provisions hereinafter contained.

46. Provided always, and be it enacted, that any person claiming to be interested in any lands or in the tithes thereof who shall be dissatisfied with any such decision of the commissioners or assistant commissioner, may, if the yearly value of the payment to be made or withholden according to such decision shall exceed the sum of twenty pounds, cause an action to be brought in any of His Majesty's courts of law at *Westminster* against the person in whose favour such decision shall have been

Subject to
Appeal by an
Issue at Law.

jeosting disputes is by a reference to arbitrators, chosen by the parties, and an umpire chosen by the arbitrators. In the compulsory cases, the adjustment rests with the commissioners or assistant commissioners, subject to an appeal at law, as provided in the following clauses.

By these clauses all the suits of the description above mentioned, which may be pending on the 1st October, 1838, will be transferred to the commissioners. Previous to that date, the parties may refer them, under the clauses above cited, as applicable to voluntary agreements. In either case, a vast saving of costs, and vexatious litigation and heart-burning, will be effected.

made, within three calendar months next after such decision shall have been notified in writing in such manner as the commissioners or assistant commissioner shall direct, to the parties interested therein or to their known agents; in which action the plaintiff shall deliver a feigned issue, whereby such disputed right may be tried, and shall proceed to a trial at law of such issue at the sittings after the term or at the Assizes then next or next but one after such action shall have been commenced, to be holden for the county within which such lands or the greater part thereof are situated, with liberty nevertheless for the court in which the same shall have been commenced or any judge of His Majesty's courts of law at *Westminster*, to extend the time for going to trial therein, or to direct the trial to be in another county if it shall seem fit to such court or judge so to do; and every defendant in any such action shall enter an appearance thereto, and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendant shall fail to enter such appearance or accept such issue, then the same shall be settled under the direction of the court in which the action shall be brought, or by any judge of His Majesty's courts of law at *Westminster*, and the plaintiff may proceed thereon in like manner as if the defendant had appeared and accepted such issue; and the parties in such action shall produce to each other and their respective attorneys or counsel, at such time and place as any judge may order before trial, and also to the court and jury upon the trial of any such issue, all books, deeds, papers, and writings, terriers, maps, plans, and surveys relating to the matters in issue in their respective custody or power; and it shall be lawful for the judge by whom any such action

shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the court upon a special case; and the verdict which shall be given in any such action, or the judgment of the court upon the case subject to which the same may be given, shall be final and binding upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict and order a new trial to be had therein, which it shall be lawful for the said court to do, if it shall see fit: Provided also, that in case any such decision shall involve a question of law only, and the parties in difference shall be agreed upon the facts relating thereto, and whereon such decision shall have been founded, the said commissioners or assistant commissioner, at the request of the person dissatisfied, (such request to be made in writing within three calendar months after such decision, and at least fourteen days' previous notice in writing of such request to be given in like manner to the other parties in difference or to their known agents,) shall direct a case to be stated for the opinion of such one of His Majesty's courts of law at *Westminster* as the commissioners or assistant commissioner shall think fit, which case shall be settled by them or him, or under their or his direction in case the parties differ about the same, and may be set down for argument and be brought before the court in like manner as other cases are brought before the court; and the decision of such court upon every case so brought before it shall be binding upon all parties concerned therein: Provided always, that after such verdict given and not set aside by the court, or after such decision of the court, the said commissioners or assistant commissioner shall be

Or by taking
the opinion of
a Court of
Law thereon.

bound by such verdict or decision; and the costs of every such action, or of stating such case and obtaining a decision thereon, shall be in the discretion of the court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the court; and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said court.

Proceedings
not to abate by
Death of Par-
ties.

47. And be it enacted,² that no proceeding of or before the commissioners or any assistant commissioner, or in any action, or in any case stated, or reference in pursuance of this Act, shall abate or cease by reason of the death of any person interested therein.

In case of
Death of
Parties before
Actions
brought, &c.
the same to be
carried on and
defended in
their names.

48. And be it enacted, that if any person in whose favour any such decision of the commissioners or any assistant commissioner shall have been made shall die before any such action shall have been brought or case stated, and before the expiration of the time hereinbefore limited for that purpose, it shall be lawful for every person who might have brought such action, or have had such case stated against the person so dying, to bring or have the same within the time so limited as aforesaid, nominally against such person as if living, and to serve the said commissioners or assistant commissioner with process and notices relating thereto, in the same manner as the person deceased might have been served therewith if living; and it shall be lawful for every person entitled to the benefit of such

² This enactment, which is one of technical advantage, relates to both voluntary agreements and references, and to compulsory proceedings or decisions of the commissioners.

decision as aforesaid, or, in case of any such person being a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof, such person as may be nominated for that purpose by the commissioners, and whom they are hereby empowered to nominate under their hands and seal, to appear and defend such action or argue such case; and proceedings shall be had therein in the same manner, and the rights of all persons shall be equally bound and concluded by the event of such action or the decision upon such case, as if such person had been living; and the costs of every such action or case shall be in the discretion of the court as aforesaid.

49. Provided always, and be it enacted, that nothing in this Act contained shall revive any right to tithes which now is or hereafter shall be barred by any law in force for shortening the time required in claims of *modus decimandi* or exemption from or discharge from tithes, or for the limitation of actions and suits relating to real property.^a Statutes of Limitation not to be affected.

50. And be it enacted, that as soon as all such suits and differences shall have been decided, or if there shall have been no suits or differences, then as soon as the commissioners or assistant commissioner shall have ascertained and estimated as aforesaid the total value of all the tithes of the said parish, the commissioners or assistant commissioner shall frame the draft Commissioners to award total sum to be paid for the tithes of the Parish.

^a These Acts are two, one commonly called Lord Tenterden's Act, being 2 & 3 W. 4. cap. 100; the other, the present Statute of Limitations, being 3 & 4 W. 4. cap. 27.

of an award, declaring that the sum ascertained as aforesaid shall be the amount of the rent-charge to be paid in respect of the tithes of the said parish, and every such draft shall contain all the particulars hereinbefore required to be inserted in any parochial agreement, or any schedule thereto :^b Provided always, that no such award shall be made for giving land instead of the tithes of the parish.^c

Such Award
not to extend
to giving Land.

Commissioners
may hear and
determine
objections to
the Award,

and appoint a
Meeting for the
purpose.

51. And be it enacted, that as soon as the said draft shall have been made by the commissioners or assistant commissioner, they or he shall deposit a copy of the same, and of any special report thereunto annexed, at some convenient place within the said parish, for the inspection of all persons interested in the said lands or tithes, and shall forthwith give notice in such manner as to the commissioners shall seem fit, where the said copy may be inspected; and shall also in such notice appoint some convenient place and time (the first not earlier than twenty-one days from the first giving of such notice) for holding a meeting to hear objections to such intended award by any person interested therein; and the said commissioners or assistant commissioner at such meeting as aforesaid shall hear and determine any objections which may be then and there made to the said intended award, or

^b See note to Clause 21.

^c Land can only be given in the case of parochial agreements under Clauses 29, 30, and 31. But, after the intervention of the commissioners, a power is given by Clause 62, enabling any landowner to make a voluntary agreement with any ecclesiastical titheowner for land to the extent of twenty acres, previous to the confirmation of the apportionment. The commissioners are prohibited from awarding land, for the obvious reason, that it would, in effect, be giving them a power to make a compulsory redemption.

adjourn the further hearing thereof, if they or he shall think proper, to a future meeting, and may, if they or he shall see occasion, direct any further valuation of the lands or tithes, or any of them; and from time to time fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they or he shall amend the draft of such award accordingly, if they or he shall see occasion.^d

Award to be amended if Commissioners shall see occasion.

52. And be it enacted,^e that as soon as the commissioners or assistant commissioner shall have made such amendments in the draft of the award as to them or him shall seem necessary, they or he shall cause the same to be fairly written, and shall sign and send it to the office of the commissioners, and the commissioners shall satisfy themselves that all the proceedings incident to the making of such award have been duly performed; and if they shall think that the award ought to be confirmed, shall confirm the same under their hands and seal, and shall add to the award the date of such confirmation, and shall publish the fact of such confirmation and the date thereof, in the parish, in such manner as to them shall seem fit; and every such confirmed award shall be binding on all persons interested in the said lands or tithes.

Award to be confirmed by the Commissioners.

Confirmed Award binding on all Persons.

^d By Clause 65, the commissioners are empowered to give special notice to reversioners and remainder-men, and other persons interested in the award.

^e This confirmation closes that part of the commutation which fixes the total rent-charge on the parish, and brings the transaction down to the same stage as the confirmation of the parochial agreement, by Clause 27.

Commissioners
to summon
a Parochial
Meeting to
appoint
Valuers.

53. And be it enacted,^f that as soon as the commissioners shall have confirmed any such award, the commissioners or some assistant commissioner shall call a parochial meeting of the owners of land subject to tithes in the said parish, for the purpose of choosing valuers to apportion the amount so awarded among the lands of the parish, and shall give notice thereof in writing under their or his hand, to be fixed at least twenty-one days before such meeting on the principal outer door of the church, or in some public and conspicuous place within the parish; and valuers or a single valuer may be chosen at such meeting by the landowners then present in like manner, and the valuers so chosen shall act with the same powers and be subject to the same provisions, as if the rent-charge so awarded had been agreed to at a parochial meeting of the landowners and titheowners of the parish, and the valuers had been thereupon chosen as aforesaid.^g

If valuation
not completed
in Six
Months, Com-
missioners to
apportion.

54. And be it enacted,^h that if upon the expiration of six calendar months after the day of the date of the confirmation of any agreement or award, no valuer or valuers shall have been appointed, or the apportionment by such valuers or valuer shall not have been made and sent to

^f The commissioners, having agreed on their compulsory award of the total sum to be paid in any parish, are by this clause required to call a parochial meeting of the landowners, for the purpose of appointing valuers to effect the apportionment; thus recurring to the voluntary principle.

^g See 32d and three following clauses.

^h If the landowners, after being thus called on, or even after they shall have agreed voluntarily on the whole sum to be paid, shall not fix on valuers within six months from the confirmation of the agreement, or award, or if the valuers shall not have completed their apportionment by that time; then the commissioners may, by this clause, appoint their own valuers, and proceed to a compulsory apportionment.

the office of the commissioners as hereinafter provided, it shall be lawful for the commissioners or some assistant commissioner to apportion the rent-charge previously agreed or awarded to be paid among the lands of the said parish, having regard to the average titheable produce and productive quality of the said lands, according to the discretion and judgment of the commissioners or assistant commissioner, but subject to the provisions hereinafter contained, and so that the several lands may have the full benefit in each case of every modus, composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable.

Having regard to Produce and Quality of Lands.

Moduses, &c. to be respected.

55. And be it enacted,ⁱ that a draft of every apportionment shall be made, and shall set forth the agreement or award, as the case may be, upon which such apportionment is founded, and every schedule thereunto annexed; and the said draft, or some schedule thereunto annexed, whether made by or under the direction of the valuers or commissioners or assistant commissioners, shall state the name¹ or description and the true or estimated quantity in statute measure

Form of Apportionment.

This form of apportionment must be strictly followed in the case of either voluntary or compulsory apportionment. It will repeat the agreement or award for the whole sum and its schedule, and add the following particulars:—

1. The name, description, and statute measure of the several lands of each landowner.

2. Names and descriptions of the proprietors.

3. And of the occupiers.

4. Mode of cultivation at the time of the apportionment.

5. With references to a map or plan.

6. And add such map or plan, with corresponding references.

7. The amount charged on such several lands.

8. To whom and in what right payable.

of the several lands to be comprised in the apportionment, and shall set forth the names² and description of the several proprietors and occupiers³ thereof, and whether the said several lands are then cultivated⁴ as arable, meadow, or pasture land, or as wood land, common land, or howsoever, otherwise, and shall refer,⁵ by a number set against the description of such lands, to a map or plan⁶ to be drawn on paper or parchment, and the same number shall be marked on the representation of such lands in the said map or plan; and the draft of the apportionment shall also state the amount⁷ charged upon the said several lands, and to whom⁸ and in what right the same shall be respectively payable.

Comptroller of
Corn Returns
to publish
Average Price
of Corn.

56. And be it enacted, that immediately after the passing of this Act, and also in the month of *January* in every year, the comptroller of corn returns for the time being, or such other person as may from time to time be in that behalf authorized by the privy council, shall cause an advertisement to be inserted in the *London Gazette*, stating what has been, during seven years ending on the *Thursday* next before *Christmas* day then next preceding, the average price of an imperial bushel of *British* wheat, barley, and oats, computed from the weekly averages of the corn returns.

Rent-charges
to be valued

57. And be it enacted, that every rent-charge^k

^k The corn returns are made weekly from 150 towns in England and Wales, under the 9 Geo. 4, cap. 60. The returns ending Christmas, 1835, are those on which all commutations, at whatever period they may be made, will be founded.

They are for an imperial bushel of Wheat, 7s. 0^d.

„ „ Barley, 3s. 11^d.

„ „ Oats, 2s. 9^d.

The progress of every commutation will be as follows :—

1st. To ascertain the gross annual amount in money-value of the tithes which have been paid in any parish or district; calculated in the case of an award by the Commissioners, on an average of seven years, ending Christmas 1835, upon the principles of the Clauses 37 to 52.

charged upon any lands by any such intended apportionment shall be deemed at the time of the confirmation of such apportionment, as hereinafter provided, to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats as the same would have purchased at the prices so ascertained by the advertisement to be published immediately after the passing of this Act,

according to
the average
price of Corn,
according to
returns ending

2dly. To ascertain how many bushels of each of the three kinds of grain would be purchased with such amount at the average prices ascertained by the returns, ending Christmas, 1835; as, *e. g.*, if the gross amount be 300*l.*, 100*l.* would be calculated as if laid out in wheat; 100*l.* in barley; 100*l.* in oats.

3dly. To ascertain in each succeeding year the money-value of this number of bushels of each kind of grain, at the price fixed by the average of the seven years, ending at the then preceding Christmas. Thus, suppose the whole amount ascertained before Christmas, 1836, is 300*l.*, then taking nearly the average prices of the seven years ending Christmas, 1835, and neglecting the fractions, one-third of the 300*l.*, or 100*l.*, at 7*s.* per bushel, would give 286 bushels of wheat.

100*l.*, at 4*s.* per bushel, would give 500 bushels of barley.

100*l.*, at 2*s.* 9*d.* per bushel, would give 727 bushels of oats. Supposing that at Christmas, 1836, the average price of the seven preceding years should be—

Wheat, 6*s.* per bushel
Barley, 3*s.* 6*d.* do.
Oats, 2*s.* 6*d.* do.

The rent-charge of 1837 would be—

		£	s.	d.
286	bushels of Wheat, at 6 <i>s.</i> =	85	16	0
500	„ Barley, 3 <i>s.</i> 6 <i>d.</i> =	87	10	0
727	„ Oats, 2 <i>s.</i> 6 <i>d.</i> =	90	17	6
Total for 1837 . . .		264	3	6

And the like process would take place in every future year, according to Clause 67; the money-value varying according to the price of the seven years' returns ending at the then preceding Christmas.

It was strongly urged that the price of meat should be taken as a criterion; but even if this were desirable, it is to be recollected that there is no machinery for ascertaining the price with sufficient accuracy.

in case one-third part of such rent-charge had been invested in the purchase of wheat, one-third part thereof in the purchase of barley, and the remaining third part thereof in the purchase of oats; and the respective quantities of wheat, barley, and oats so ascertained shall be stated in the draft of every apportionment.

Rent-charge may be specially apportioned on particular Lands at request of any Landowner.

58. And be it enacted,¹ that it shall be lawful for the valuers or commissioners or any assistant commissioner, upon the request of any landowner, at any time before the confirmation of the apportionment, to apportion the whole rent-charge intended to be charged upon any lands of such landowner held under the same title and for the same estate, in the same parish, specially upon the several closes or portions of such lands, or according to an acreable rate or acreable rates, upon lands of different quality, in such manner and in such proportion, and to the exclusion of such of them as the landowner, with the consent of the person entitled to such rent-charge, may direct; and the particulars of every such special apportionment shall be included in the draft of the apportionment and taken to be a part thereof: Provided always, that the extra expenses of every such special apportionment shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of the apportionment are recoverable; and that no close of land shall be

How Expenses to be paid.

No Close to be charged unless

¹ This is an important provision, as it will enable landowners to redeem their tithes to a very great extent, by charging them on any particular lands of the requisite value; so by fixing them at a sum per acre, each portion of the land will bear only its own burthen, and not be charged with the whole rent-charge fixed on the other lands of the owner. (See Clause 72, for alteration of apportionment after final confirmation by commissioners.)

This and the eight following clauses are applicable to every apportionment whether voluntary or compulsory.

charged with any rent-charge or share of rent-charge on account of the tithes of any other lands, unless the value of such lands shall be at least three times the value of the whole rent-charge upon such lands. three times the value of the Rent-charge.

59. And be it enacted, that for the purpose of making any such apportionment, as well as for the purpose of making any award as hereinbefore provided, the commissioners and assistant commissioners may employ such land surveyors and tithe valuers as to them shall seem fit, and may order them to be paid for valuing, surveying, mapping, and planning after any rate not exceeding two guineas to every such person for every day that he shall have been so employed, and may assess the same as part of the expenses of making their award or apportionment respectively; and the said commissioners and assistant commissioners, and the land surveyors and tithe valuers employed by them respectively, shall have all the powers and be subject to all the provisions hereinbefore enacted concerning the valuers appointed at a parochial meeting, except that they shall not be bound to adopt any principles of apportionment agreed to at any parochial meeting: Provided always, that it shall be lawful for such commissioners and assistant commissioners to make any agreement with any such land surveyors or tithe valuers for the payment to the same of one sum for the whole duty, or any part thereof, to be performed by them respectively.^m Commissioners may employ Surveyors.

Commissioners to have the power of Valuers as to entry in Lands, &c.

^m The landowners who appoint the valuers in case of voluntary agreement or apportionment, will, of course, make their own terms, recollecting that it will be ground of appeal by any person bound by the agreement, though not a party to it, if the expense, which all will have to share, be excessive.

Apportionment to be signed by the person making it, and sent with the plan to the Commissioners.

60. And be it enacted, that the draft of every apportionment, whether made by or under the direction of the commissioners or any assistant commissioner, or by any valuer or valuers appointed as hereinbefore is provided,ⁿ shall be signed by the person by or under whose direction it shall have been made, and shall be sent,^o together with the map or plan therein referred to, by the person by whom it is signed, to the office of the commissioners, or otherwise to some assistant commissioner, as the commissioners may direct, with such proof as the commissioners may require, that every proceeding incident to the making of such draft of apportionment has been duly performed.^p

Commissioners may hear and determine objections to Apportionment,

61. And be it enacted, that as soon as the draft of any such apportionment, verified as aforesaid, shall have been sent to the commissioners, they shall cause a copy of the same to be deposited at some convenient place within the said parish, for the inspection of all persons interested in the said lands or tithes, and shall forthwith cause notice to be given, in such manner as to them shall seem fit, where the said copy may be inspected; and shall also in such notice appoint some convenient place, and such times as they shall think necessary (the first not earlier than twenty-one days from the first giving of such notice), for holding a meeting to hear objections to the intended apportionment, by any person interested therein; and the said commissioners or some assistant commissioner at such meeting

and appoint Meeting for the purpose.

ⁿ Clauses 32, 3, 54. and 59.

^o If not forthwith sent, the commissioners may apportion the rent-charge. (Clause 54.)

^p This provision must be carefully attended to, so that as little time may be lost as possible in transmitting the apportionment, duly signed by the valuers, &c., to the commissioners.

as aforesaid shall hear and determine any objections which may be then and there made to the said intended apportionment, or adjourn the further hearing thereof, if they or he shall think proper, to a future meeting, and may, if they or he shall see occasion, direct any further valuation of the lands or any of them; and from time to time fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they and he are and is hereby required to cause such apportionment to be amended accordingly if they or he shall see occasion.^a

Award to be amended if Commissioners shall see occasion.

62. And be it enacted,^r that it shall be lawful for the owner of any lands chargeable with any

Landowner may give twenty acres of

^a It will be a proper precaution for every tithe-payer and owner to inspect this document when deposited, in order to judge of its accuracy in his own case, and to object in due time, as, after the confirmation, the rent-charge is irrevocably fixed. (Clause 66.) This provision for hearing objections to the apportionment is similar to that for objections to the confirmation of the compulsory award of the total rent-charge. (Clause 51.) Before confirming the parochial agreement, the commissioners, by Clause 27, have to make inquiry, and be satisfied of its accuracy, and would then dispose of any objections to that stage of the commutation.

^r This clause is to the same effect as Clause 29, with the exception of the stage of commutation at which it takes place, and of its being a licence to individual land-owners. In the former provision it was parochial, because no individual agreements for commutation are allowed, previous to the interference of the commissioners. Here, as they have already fixed the amount of rent-charge over the whole parish, it is allowed to individuals to give land by way of commutation for the charge fixed on them before the apportionment is finally confirmed. But in this case, as

Land in exchange for Ecclesiastical Tithes or Rent-charge.

With like consent, &c. as in case of Parochial Agreement for Land.

Former Agreement for Land to be annulled by subsequent Agreement.

such rent-charge, to agree at any time before the confirmation of any such instrument of apportionment with any ecclesiastical person, being the owner of the tithes thereof in right of any spiritual benefice or dignity, for giving land instead of the rent-charge charged or about to be charged upon his lands; and every such agreement shall be made under the hands and seals of the landowner and titheowner, and shall contain all the particulars hereinbefore required to be inserted in a parochial agreement for giving land instead of tithes or rent-charge: Provided always, that no such titheowner shall be enabled to take or hold more than twenty imperial acres of land in the whole, by virtue of any such agreement or agreements made in the same parish; and the same consent and confirmation relatively to the lands and tithes comprised in the said agreement shall be necessary to any such agreement, as in the case of a parochial agreement for giving land instead of tithes; and all the provisions hereinbefore contained concerning a parochial agreement for giving land shall be applicable to every such agreement as hereinbefore last mentioned, so far as concerns the lands and tithes comprised in the said agreement: Provided also, that any amendment which shall be made in the draft of apportionment before confirmation thereof, and subsequent to any such agreement for giving land instead of rent-charge, whereby the charge upon the lands referred to in such agreement shall be altered, shall be taken to annul the execution of such agreement for giving land, and any consent which may have been necessary thereunto.*

in Clause 29, the power is limited to twenty acres, and to ecclesiastical tithe.

* This proviso is clearly necessary: for a landowner might have agreed to give, say three acres, in lieu of the rent-charge fixed upon him by the first draft of the

63. And be it enacted, that after such proceedings as aforesaid shall have been had, and all such objections (if any) shall have been finally disposed of, the commissioners or assistant commissioner shall cause the instrument of apportionment to be engrossed on parchment, and shall annex the map or plan thereunto belonging to the engrossed instrument of apportionment, and shall sign the instrument of apportionment, and the map or plan, and shall send both to the office of the commissioners; and if the commissioners shall approve the apportionment they shall confirm the instrument of apportionment under their hands and seal, and shall add thereunto the date of such confirmation.¹

Confirmation of apportionment by the Commissioners.

Map or Plan to be annexed.

64. And be it enacted, that two copies of every confirmed instrument of apportionment, and of every confirmed agreement for giving land instead of any tithes or rent-charge, shall be made and sealed with the seal of the said commissioners; and one such copy shall be deposited in the registry of the diocese within which the parish is situated, to be there kept among the records of the said registry, and the other copy shall be deposited with the incumbent and church or chapel wardens of the parish for the time being, or such other fit persons as the commissioners shall approve, to be kept by them and their successors in office with the public books, writings, and papers of the parish; and all persons interested therein may have access to and be fur-

Copies to be deposited in Registry of Diocese, and with Incumbent and Churchwardens.

apportionment, but on appeal his charge might eventually prove of the value of four or only two, and an alteration in the bargain would be required accordingly.

¹ This confirmation of the apportionment is, in effect, the completion of the commutation.

May be inspected and Copies furnished.

Recitals to be: Evidence of Facts recited.

Commissioners may require notice of Agreements or Awards, to be given to Reversioner.

Agreements, Awards, and Apportionments not to be questioned after confirmation.

Lands to be discharged from Tithes,

nished with copies of or extracts from any such copy, on giving reasonable notice to the person having custody of the same, and on payment of two shillings and six-pence for such inspection, and after the rate of three-pence for every seventy-two words contained in such copy or extract; and every recital or statement in or map or plan annexed to such confirmed apportionment or agreement for giving land, or any sealed copy thereof, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such plan.

65. And be it enacted, that the commissioners, if they shall see fit, before confirming any agreement,^u award,^v or apportionment,^w may require notice thereof to be given in such manner as they shall direct to the person next in remainder, reversion, or expectancy of an estate of inheritance in any lands or tithes, or any other person to whom they may think notice ought to be given, and may by themselves or by some assistant commissioner hear and determine any objection made to such confirmation by any person interested therein, and may direct any award or apportionment to be amended accordingly.

66. And be it enacted, that no confirmed agreement, award, or apportionment shall be impeached after the confirmation thereof, by reason of any mistake or informality therein, or in any proceeding relating thereunto.

67. And be it enacted, that from the first day of *January* next following the confirmation of every such apportionment,^x the lands of the said

^u See Clause 27. ^v See Clause 51. ^w See Clause 63.

^x The tithes will be payable up to the 1st of *January* next after the date of confirmation of the award. The first half-

parish shall be absolutely discharged from the payment of all tithes, except so far as relates to the liability of any tenant at rack-rent dissenting as hereinafter provided,⁷ and instead thereof there shall be payable thenceforth to the person in that behalf mentioned in the said apportionment a sum of money equal in value, according to the prices ascertained by the then next preceding advertisement, to the quantity of wheat, barley, and oats, respectively mentioned therein, to be payable instead of the said tithes, in the nature of a rent-charge issuing out of the lands charged therewith; and such yearly sum shall be payable by two equal half-yearly payments, on the first day of *July* and first day of *January* in every year, the first payment, except in the case of barren reclaimed lands, as hereinafter provided, being on the first day of *July* next after the lands shall have been discharged from tithes as aforesaid; and such rent-charge may be recovered at the suit of the person entitled thereto, his executors or administrators, by distress and entry as hereinafter mentioned; and after every first day of *January* the sum of money² thenceforth payable in respect of such rent-charge shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley, and oats respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled from time to time to any such varied rent-charge, shall have the same powers for enforcing payment thereof as are herein contained concerning the original rent-

and Rent-charge paid in lieu thereof.

being money-value of Grain payable instead of Tithes.

Rent-charge to be recovered by Distress and Entry,

and to vary every Year, according to prices ascertained at preceding Christmas.

yearly payment of the rent-charge will be due on the 1st of July next following such 1st of January.

⁷ The case of tenants at rack-rent dissenting from the agreement is provided for Clause 79.

² See note to Clause 57.

No Person to be personally liable for Rent-charge.

Payment of Rent-charge on reclaimed Lands to be postponed until Tithes would have been due.

charge: Provided always, that nothing herein contained shall be taken to render any person whomsoever personally^a liable to the payment of any such rent-charge: Provided always, that the rent-charge which shall be apportioned upon any lands in the said parish, which during any part of the said period of seven years preceding *Christmas* one thousand eight hundred and thirty-five were exempted from tithes by reason of having been enclosed under any Act of Parliament, or converted from barren heath or waste ground,^b shall be payable for the first time on the first day of *July*, or first day of *January* next following the confirmation of the apportionment which shall be nearest to the time at which tithes were or would have become payable for the first time in respect of the said lands if no commutation thereof had taken place.

Lands in Parish to be free from the Tithes of lands given in commutation.

68. And be it enacted,^c that from the first day of *January* next following the confirmation of every parochial or other agreement for giving land instead of any tithes or rent-charge, the lands of the parish in which any such agreement shall be made shall be absolutely discharged from the payment of the tithes or rent-charge for which it shall have been agreed that such land shall be given.

^a By this proviso every one is exempt from a personal action for rent-charge, the land out of which it issues being the sole resource for the arrears. (See note^b to Clause 85.)

^b Under 2 and 3 Ed. 6, cap. 13, sec. 5 and 6, barren heath and waste ground newly brought into cultivation, do not pay tithes till after seven years from their being so cultivated. (See Clause 43.)

^c That is, the whole rent-charge of the parish will be diminished by the value of the rent-charge for which the twenty acres were given, under the 29th and 62d Clauses; but whether that diminution shall specially apply to any particular portion, or to the whole gross sum, will depend on special agreement.

69. And be it enacted, that every rent-charge payable as aforesaid instead of tithes, shall be subject to all parliamentary, parochial, and county and other rates,^d charges, and assessments, in like manner as the tithes commuted for such rent-charge have heretofore been subject.

Rent-charge to be liable to Parochial and County Rates.

70. And be it enacted, that all rates and charges to which any such rent-charge is liable shall be assessed upon the occupier of the lands out of which such rent-charge shall issue; and in case the same shall not be sooner paid by the owner of the rent-charge for the time being,^e may be recovered from such occupier in like manner as any poor-rate assessed on him in respect of such lands; and any occupier holding such lands under any landlord, and who shall have paid any such rate or charge in respect of any such rent-charge, shall be entitled to deduct the amount thereof from the rent next payable by him to his landlord for the time being, and shall be allowed the same in account with his landlord; and any^f landlord or owner in possession who shall

How Rates and Charges are to be recovered.

Occupying Tenant paying the same, may deduct Amount from Rent.

^d See note to Clause 37.

^e As the titheowner often is non-resident, or has no property in the parish except tithes, it would be impossible to collect the rate from him, and the rent-charge cannot be taken by distress for rates. Hence it was necessary to make the occupier liable, giving him a power to deduct the amount from his next payment of rent. Tenants must attend to this, or they may have no remedy for recovery of any rent-charge paid by them. This provision is on the same principle as that which was in force for recovery of the property-tax paid by tenants or incumbrancers.

^f The rent-charge is by this Act fixed on the landlord. Hence if the occupier pay the rates assessed in respect of the rent-charge, his first claim is on the landlord, who can always deduct the rate from the rent-charge which he has to pay. And when the landowner has so paid it, or allowed the payment to his tenant, he is empowered by this clause to deduct it from the rent-charge, in account with its owner. If through any cause he may have paid the full rent-charge

have paid any such rate or charge, or from whose rent the amount of any such rate or charge in respect of any such rent-charge shall have been so deducted, or who shall have allowed the same in account with any tenant paying the same, shall be entitled to deduct the amount thereof from the rent-charge, or by all other lawful ways and means to recover the same from the owner of the rent-charge, his executors and administrators; provided that the owner of every such rent-charge shall have and be entitled to the like right of demanding, inspecting,^g and taking copies of every assessment containing such rate or charge, and of appeal against the same, and the like power of prosecuting such appeal, and the like remedies in respect thereof, as any occupier or rate-payer has or may have in the case of poor-rates, although such rate or charge is herein made assessable upon the occupier, and the owner of the rent-charge is not mentioned by name in such assessment.

Rent-charge
to be subject to
the same en-
cumbrances
and incidents
as Tithe before
this Act.

71. And be it enacted,^h that any person having any interest in or claim to any tithes, or to any charge or encumbrance upon any tithes, before the passing of this Act, shall have the same right to or claim upon the rent-charge for which the same shall be commuted as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his

without providing for the deduction, he may still have his remedy under the words, "by other lawful ways and means to recover the same."

^g The occupier who is assessed, has no interest in appealing, hence this right of inspecting the rate, and of appeal against it, is necessary as a protection to the owner of the rent-charge from being fixed with undue assessment.

^h The effect of the first part of this clause is merely to put rent-charge and tithes on the same footing as to encumbrances, and charges existing, previous to the passing of the Act.

right or claim to or upon the rent-charge had accrued after the commutation; provided that nothing herein contained shall give validity to any mortgage or other encumbrance which before the passing of this Act was invalid or could not be enforced; and every estate for life, or other greater estate, in any such rent-charge, shall be taken to be an estate of freehold;¹ and every estate in any such rent-charge shall be subject to the same liabilities and incidents as the like estate in the tithes commuted for such rent-charge;² and where any lands were exempted from tithe whilst in the occupation of the owner thereof by reason of being glebe, or of having been heretofore parcel of the possessions of any privileged order, the same lands shall be in like manner exempted from the payment of the rent-charge apportioned on them whilst in the occupation of the owner thereof; and where by virtue of any Act or Acts of Parliament heretofore passed, any tithes are authorized to be sold, exchanged, appropriated, or applied in any way, the rent-charges for which such tithes may be commuted under the provisions of this Act, or any part thereof, shall or may be saleable or exchangeable, appropriated and applied, to all intents and purposes, in like manner as such tithes; and the same powers of sale, exchange, and appropriation shall in all such cases extend to and may be exercised in respect of the said commutation rent-charges;¹ and the money to arise by the

Estates for Lives, or greater Estates, Estates of Freehold.

Provision for certain Exemptions,

and for cases of Tithes commuted under Local Acts.

¹ This places the rent-charge on the same footing as tithes, which are a freehold, though issuing perhaps out of copyhold property.

² As dower, liability to sequestration in case of ecclesiastical tithe, liability to provide a curate, or to repair the chancel, and the like.

¹ This provision places rent-charges under this Act on the same footing as tithes commuted under local Acts.

Rent-charge
not to merge,

but Tenant in
Fee may de-
clare the same
merged.

sale of such rent-charges shall or may be invested, appropriated, and applied to the same purposes and in like manner as the money to arise by the sale of any such tithes might have been invested, appropriated and applied under such particular Act or Acts in case this Act had not been passed; and no such rent-charge shall merge or be extinguished in any estate of which the person for the time being entitled to such rent-charge may be seized or possessed in the lands on which the same shall be charged: Provided always, that it shall be lawful for any person seized in possession of an estate, in fee-simple or fee-tail of any tithes or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the said commissioners shall approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of the same, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands on which the same shall have been charged.^m

Apportionment
may be altered
by Commis-
sioners of
Land-tax, if
desired.

72. And be it enacted, that if at any time subsequent to the confirmation of any such instrument of apportionment the owner of any lands charged with any such rent-charge shall be desirous that the apportionment thereof shall be altered,ⁿ it shall be lawful for the commissioners

^m This power is analogous to the power for redeeming or purchasing the land-tax.

ⁿ In case any landowner be desirous of effecting a new apportionment, so as to sell part of his lands, free of rent-charge, and have made no such apportionment previous to the award being confirmed by the commissioners, under the provisions of Clause 53, this clause enables him to do it, through the machinery of the land-tax commissioners, and two justices; the effect is the same as Clause 48. The reference to the commissioners of the land-tax provides a good local authority, as evidence of the fairness of the pro-

of land tax for the county or place where the said lands are situate, or any three of them, to alter the apportionment in such manner and in such proportion and to the exclusion of such of the lands as the landowner, with the consent of two justices of the peace acting for the county, riding, division, or other jurisdiction in which the lands are situated, may direct; and such altered apportionment shall be made by an instrument in writing under the hands and seals of the said commissioners of land tax and of the said landowner and justices, of the like form and tenor as to the said lands as the original apportionment, and bearing date the day of its execution by the said commissioners of land tax, subject to the provision hereinbefore contained with respect to the value of lands on which any rent-charge may be charged on account of the tithes of any other lands ;^o and every such altered apportionment shall be as valid as if made and confirmed by the tithe commissioners as aforesaid, and shall be taken to be an amendment of the original apportionment; and in every such case two counterparts of the instrument of altered apportionment, under the hands and seals of the said commissioners of land tax and justices and landowner, shall be sent, one to the registrar of the diocese, and one to the incumbent and church or chapel wardens, or other person having the custody of the other copy of the original instrument of apportionment; and one counterpart shall be annexed to the copy of the instrument of apportionment in the custody of the registrar and such other person respectively,

Mode of effect-
ing this.

ceeding; and the choice of the land-tax commissioners is similar to that which was adopted under the Property-tax Acts, where they were chosen as the commissioners of appeal under those Acts.

^o See Clause 58.

and taken to be an amendment thereof; and thenceforward such lands shall be charged only according to such altered apportionment; and all expenses of such alteration shall be borne by the landowner desiring the same.

Expenses of
Witnesses to be
paid under the
direction of the
Commissioners.

73. And be it enacted,^p that the commissioners or assistant commissioner, in any case where they or he may see fit, may order such expenses of witnesses, and of the production of any books, deeds, contracts, agreements, accounts, or writings, terriers, maps, plans, and surveys, or copies thereof, and all other expenses (except the salary or allowance to any commissioner or assistant commissioner) incurred in the settlement of any suit or difference, or in the hearing and determining any objection to any award or apportionment before the said commissioners or any assistant commissioner, to be paid by such parties interested in the production thereof respectively, or in the event of such suit, difference, or objection, and in such proportions as the commissioners or assistant commissioner shall think fit and reasonable.

Expenses of
making any
Award to be
paid by the
Landowners
and Tithe-
owners as the
Commissioners
may direct.

74. And be it enacted,^q that the allowances to and expenses of land surveyors and tithe valuers necessary for making any award, and all other expenses of or incident to making the said award, except the salary or allowance to any commissioner or assistant commissioner, and

^p The expenses of witnesses, production of books, &c. may be beneficial to both landowners and titheowners, or either, and hence the commissioners may award the expenses as the case may require, and according to the interest of the parties.

^q Titheowner and landowner are both interested in this award, and hence the commissioners have only to fix the proportion of expense to be borne by each.

except any expenses which the commissioners or any assistant commissioner, or any court or arbitrator, may be authorized to order and may have ordered to be otherwise paid, shall be borne and paid by the landowners and titheowners interested in the said award, in such proportion, time, and manner as the commissioners or assistant commissioner shall direct.

75. And be it enacted,^r that all the expenses of or incident to making any apportionment (except the salary or allowance to any commissioner or assistant commissioner, and except any expense which the commissioners or assistant commissioner may be authorized and may have ordered to be otherwise paid,) shall be borne and paid by the owners of lands included in the apportionment in ratable proportion to the sum charged on the said lands in lieu of tithes by such apportionment.

Expenses of Apportionment to be borne ratably by the Landowners.

76. And be it enacted, that if any difference shall arise touching the said expenses, or the share thereof to be paid by any person, it shall be lawful for the commissioners or some assistant commissioner to certify under their or his hand the amount to be paid by such person; and in case any person shall neglect or refuse to pay his share so certified to be payable by him, and upon the production of such certificate before any two justices of the peace for the county or other jurisdiction wherein the lands mentioned in the agreement or award or apportionment are situate, such justices, upon the non-payment thereof, are hereby required, by warrant under

Expenses may be recovered by Warrant of Distress.

^r The apportionment of the gross rent-charge being a matter concerning the landowners alone, they alone are to bear the expenses.

their hands and seals, to cause the same and the costs of the distress to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus (if any), after deducting the charges of the distress and sale, to the person distrained upon.

Owners of particular Estates may charge the Costs on the Estate for Twenty Years.

77. And be it enacted, that every owner of an estate in land or tithes less in the whole than an immediate estate of fee-simple or fee-tail, or which shall be settled upon any uses or trusts, may, with the consent of the commissioners, and in such manner as they may direct, charge so much of the expenses of commutation as is to be defrayed by him, or any part thereof, and the interest thereon, after the rate of four pounds by the hundred, upon the lands whereof the tithes are commuted, or upon the rent-charge to be received by him instead of such tithes respectively; but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one-twentieth part at least of the whole original charge thereon.

Costs of Ecclesiastical Titheowners may be charged on the Benefice for Twenty Years.

78. And be it enacted, that every ecclesiastical beneficed person who shall commute the tithes of his benefice under this Act, may advance or borrow the sum necessary to defray so much of the expenses of commutation as is to be defrayed by him, or any part thereof, and as a security for repayment may charge or assign the rent-charge to be received instead of such tithes for twenty years, or until the principal sum advanced or borrowed, and the interest thereon, after the rate of four pounds by the hundred, and the expenses of such charge or assignment, shall be sooner paid; and every incumbent successively shall pay the interest of the sum

advanced or borrowed, or of so much thereof as shall then remain unpaid, as the same shall become due, or within one calendar month next following, and also an instalment at the rate of five pounds for every hundred pounds of the principal sum advanced or borrowed; and in default of such payment the ordinary may sequester the profits of the benefice until such payments shall be made: Provided that the sum to be so advanced or borrowed shall be ascertained and certified under the hand of any commissioner or assistant commissioner, and shall be by him stated to have been the amount of such expenses properly incurred by such ecclesiastical beneficed person in relation to such commutation.

79. And be it enacted, that any tenant or occupier who at the time of such commutation shall occupy at rack-rent any lands of which the tithes shall be so commuted, may, within one calendar month next after the confirmation of the apportionment by the commissioners, signify by writing under his hand, given to or left at the usual residence of his landlord or his agent, his dissent from being bound to pay any rent-charge apportioned and charged on the said lands as aforesaid,^t and in that case such landlord shall be entitled, from the time when the said apportionment shall take effect, and during the tenancy or occupation of such tenant or occupier, to stand, as to the perception and collec-

If Tenant of Lands at Rack-rent dissent from paying the Rent-charge, the Landlord may take the Tithes during the Tenancy.

It is scarcely probable that any tenant will dissent from paying a rent-charge in preference to having his tithes taken in kind; but should there be such a case, this clause provides for it, and enables such a party to continue paying tithes to his landlord, who having commuted, will pay the rent-charge to its owner, but becomes the titheowner as between himself and his tenant. Tenants wishing to dissent should observe the provisions of this clause.

tion of tithes, or receipt of any composition instead thereof, in the place of the owner of the tithes so commuted, and to have all the powers and remedies for enforcing render and payment of such tithes or composition which the titheowner would have had if the commutation had not taken place.

Tenant paying Rent-charge to be allowed the same in account with his Landlord.

80. And be it enacted, that any tenant or occupier at the time of such commutation who shall have signified his dissent from being bound to pay any such rent-charge as aforesaid, or who shall hold his lands under a lease or agreement, providing that the same shall be holden and enjoyed by him free of tithes, and every tenant or occupier who shall occupy any lands by any lease or agreement made subsequently to such commutation, and who shall pay any such rent-charge, shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.

When Rent-charge is in arrear for 21 Days after half-yearly days of payment, the person entitled thereto may distrain.

81. And be it enacted, that in case the said rent-charge shall at any time be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof, or on any part thereof, for all arrears of the said rent-charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years: Provided that not more than two years' arrears shall at any time be recoverable by distress.

No more than two years' arrears to be

32. And be it enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of His Majesty's courts of record at *Westminster*, upon affidavit, of the facts, to order a writ to be issued, directed to the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and to return the inquisition thereupon taken to some one of His Majesty's courts of law at *Westminster*, on a day therein to be named, either in term time or vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent, ten days previous to the execution thereof; and the sheriff is hereby required to execute such writ according to the exigency thereof; and the costs of such inquisition shall be taxed by the proper officer of the court; and thereupon the owner of the rent-charge may sue out a writ of habere facias possessionem, directed to the sheriff, commanding him to cause the owner of the rent-charge to have possession^a of the lands chargeable therewith until the arrears of rent-charge found to be due, and the said costs, and also the costs of such writ and of executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied: Provided always, that

When Rent-charges are in arrear for 40 Days after half-yearly days of payment, and no sufficient Distress on the premises, Writ to be issued directing Sheriff to summon Jury to assess arrears.

^a The powers of distress and entry are incidental to every case of ordinary rent-charge. The remedy here provided is cheaper and more expeditious than an ejectment, being similar to an inquisition on judgment.

not more than two years' arrears over and above the time of such possession shall be at any time recoverable.

Account, how
to be rendered.

83. And be it enacted,^x that it shall be lawful for the court out of which such writ shall have issued, or any judge at chambers, to order the owner of the rent-charge who shall be in possession by virtue of such writ, from time to time to render an account of the rents and produce of the lands and of the receipts and payments in respect of the same, and to pay over the surplus (if any) to the person for the time being entitled thereunto, after satisfaction of such arrears of rent-charge and all costs and expenses as aforesaid, and thereupon to order a writ of supersedeas to issue to the said writ of habere facias possessionem, and also by rule or order of such court or judge from time to time to give such summary relief to the parties as to the said court or judge shall seem fit.

84. Provided always, and be it enacted,^y that in all cases in which it shall be necessary to make any distress under this Act in respect of

^x This clause provides for rendering an account of the rents and produce whilst the lands are held by the titheowner under the powers of entry. The remedy of taking this account before a judge at chambers, instead of the costly process of a chancery suit, is infinitely less burthensome, and far more efficient for all parties. Whenever this power is put in force it will behove the titheowner to be very careful in taking and keeping an accurate account of all his costs, outlay of capital, and returns, and to preserve vouchers for each. The want of vouchers is a very common case with idle or negligent accounting parties; but as they are the only sure protection to the person entitled to call for the account, it is injustice to him to allow any item not duly vouched.

^y By 7 and 8 William 3, cap. 31, two justices are empowered to convene before them any Quaker refusing

any lands in the possession of any person of the persuasion of the people called Quakers, the same may be made upon the goods, chattels, or effects of such person, whether on the premises or elsewhere, but nevertheless to the same amount only and with the same consequences in all respects as if made on the premises; and that in all cases of distress under this Act upon persons of that persuasion, the goods, chattels, or effects which may be distrained,² shall be sold without its being necessary to impound or keep the same: Provided always, that no writ under the provision hereinbefore contained shall be issued for assessing or recovering any rent-charge payable under this Act, in respect of any lands in the possession of any person of the persuasion aforesaid, unless the same shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, without the person entitled thereto being able to find goods, chattels, or effects, either on the premises or elsewhere, liable to be distrained as aforesaid, sufficient to satisfy the arrears to which such lands are liable, together with the reasonable costs of such distress.

How to proceed in case of Quakers.

85. And be it enacted, that whenever any rent-charge payable under the provisions of this Act shall be in arrear, notwithstanding any apportionment which may have been made of any

Powers of Distress and Entry to extend to all Lands within

to pay tithes, and to distrain for the amount, if under 10*l*., with a power of appeal to the quarter sessions. This provision is made perpetual by 1 Geo. 1, stat. 2, cap. 6, and extended to 50*l*. by 53 Geo. 3, cap. 127, sec. 6. See also 5 & 6 W. 4. cap. 74.

² The provision that it shall not be necessary to impound the distress, is an advantage to the person who distrains, as the distress may be sold instanter. The clause was introduced at the request of some highly respectable members of the Society of Friends, and settled to their satisfaction.

the Parish,
occupied by the
Owner, or
under the same
Landlord or
holding.

such rent-charge, every part of the land situate in the parish in which such rent-charge shall so be in arrear, and which shall be occupied by the same person who shall be the occupier of the lands on which such rent-charge so in arrear shall have been charged, whether such land shall be occupied by the person occupying the same as the owner thereof or as tenant thereof, holding under the same landlord under whom he occupies the land^a on which such rent-charge so in arrear shall have been charged, shall be liable to be distrained upon or entered upon as aforesaid for the purpose of satisfying any arrears of such rent-charge, whether chargeable on the lands on which such distress is taken or such entry made, or upon any other part of the lands so occupied or holden: Provided always, that no land shall be liable to be distrained or entered upon for the purpose of satisfying any such rent-charge charged upon lands which shall have been washed away by the sea, or otherwise destroyed by any natural casualty.^b

No Land liable
to be distrained
on for Rent-
charge of
Lands washed
away, &c.

Powers of
4 & 5 W. 4.
to extend to

86. And be it enacted, that the several provisions of an Act passed in the fourth and fifth

^a A provision to prevent the shifting of goods, and so avoiding the distress. The effect of the clause is to extend the power of distress over all the lands in the parish occupied by the person having to pay the rent-charge, if he be the owner of the lands subject to it, or over all the lands of such owner held by the tenant of the land subject to the rent-charge. Thus, if A. be owner and occupier of White-acre, and occupier only of Black-acre, B., the titheowner, may distrain and enter for arrears of rent-charge issuing out of Black-acre, on both White and Black-acre, so long as A. occupies both. Or if the rent-charge in arrear be issuing out of Black-acre, and if A. be tenant of both, under C., B., the titheowner, may enter on either, or both, for the rent-charge of either or both.

^b In these cases where the land is, in fact, lost or destroyed, the claim to rent-charge is gone also; as there is no personal liability to its payment. (See note to Clause 67.)

years of His present Majesty, intituled, *An Act to amend an Act of the Eleventh Year of King George the Second, respecting the Apportionment of Rents, Annuities, and other periodical Payments*, shall extend to all rent-charges payable under this Act.^c

Rent-charges under this Act.

87. And be it enacted, that if any barns or buildings belonging to any titheowner, having a limited estate or interest therein, which shall have been generally used for the housing of tithes paid in kind, shall be rendered in the whole or in part useless by reason of any commutation of tithes under this Act, it shall be lawful for every such titheowner^d (with the consent, nevertheless, of the commissioners, and subject to such directions as they may give, to be signified under their hands and seal,) to pull down any such barns or buildings, or any part thereof, and to sell and dispose of the materials, or to sell and dispose of all or any of such barns or buildings, and the site thereof, and either with or without any farm buildings or homesteads thereunto belonging, in such manner as the commissioners may direct; and upon payment of the consideration money, it shall be lawful for every such titheowner (with such consent as aforesaid) to convey and deliver the premises sold as aforesaid to the purchaser thereof, or to such uses and in such manner as such purchaser shall direct; and the consideration money in each case shall be paid to such

Provisions for the sale of Buildings and the sites thereof rendered useless or unnecessary by the Commutation of Tithes.

^c That is, the amount is apportionable as if it accrued *de die in diem*, and goes between heirs and executors, or on a change of incumbency, up to the day on which the change occurs.

^d It is to be observed, that the consent of the commissioners is essential to any sale under this provision, and they alone can direct how the proceeds are to be disposed of.

SURRENDER OF LEASES.

titheowner, and his receipt shall be a good discharge to the purchaser; and such titheowner shall lay out and invest the consideration money in such manner and for such trusts as the commissioners shall direct for the benefit of the persons entitled to the said rent-charge.

*Leases of
Tithes may be
surrendered.*

88. And be it enacted, that it shall be lawful for the lessee^e being in occupation of any tithes commuted under this Act, by an instrument in writing under his hand and seal, to be made in such form as the commissioners shall direct, and confirmed under their seal, to surrender and make void the lease by which the said tithes are held or enjoyed by such lessee at the time of the commutation, so far as the same may relate to the said tithes; and it shall be lawful for the commissioners, by the same instrument, to direct what compensation (if any) shall be given by the immediate lessor of any lessee at rack-rent so surrendering any lease of any such tithes to such lessee,^f and what allowance (if any) shall be made by any lessee to his immediate lessor of any such surrendered lease, in consideration of the non-fulfilment of any conditions contained in such lease, and what deduction (if any) shall be made from the rent thenceforth payable by any lessee to his immediate lessor in

^e Any lessee, to avail himself of this clause, must be in the occupation of the tithes on his surrender to the lessor; the latter, by the proviso at the end of this clause, is deemed to have become the lessee in occupation, and so forth, till the first lessor of the tithes is arrived at.

^f Suppose, for instance, that A. has made a beneficial lease to B. of lands and tithes, containing covenants for the repair of the farm buildings, possibly B. would not have taken the land unless he could have had the tithes with it; and, upon surrendering his lease, A. ought to make allowance for the benefit of the lease, and B. for the non-fulfilment of his covenant.

Some

respect of other hereditaments^s which may have been included with the said tithes in any such lease: Provided always, that any intermediate lessor to whom any such lease shall have been surrendered shall, as regards his immediate lessor, be taken to be the lessee in occupation of the tithes included in the said lease.

89. And be it enacted, that nothing in this Act contained shall affect any right to any tithes which shall have become due before the commutation.

Tithes due before Commutation, not to be affected.

90. And be it enacted, that nothing in this Act contained, unless by special provision to be inserted in some parochial agreement, and specially approved by the commissioners, in which case the same shall be valid, shall extend to any Easter offerings, mortuaries or surplice fees, or to the tithes of fish or of fishing, or to any personal tithes other than the tithes of mills, or any mineral tithes, or to any payment instead of tithes arising or growing due within the city of *London*, or to any permanent rent-charge or other rent or payment in lieu of tithes, calculated according to any rate or proportion in the pound on the rent or value of any houses or lands in any city or town under any custom or private

Act not to extend to Easter-Offerings, &c. or to payments instead of Tithes in *London*, or to permanent Rent-charges by custom or Act of Parliament.

Some anxiety has prevailed, both on the part of lessors and lessees, as to the prospect or propriety of renewing dean and chapter leases, and leases of the like kind. It is to be borne in mind, that their relative position remains the same; for the lessor will be anxious for his fine, and so be content to demise his rent-charges at a sacrifice; and the lessee, for the sake of that sacrifice, will be content to renew. The Act will destroy speculation, grounded on the uncertainty of the property, and confine the risk and anxiety to the collection of the rent-charges from a numerous body of payers.

^s As for instance, when lands are let jointly with the tithes.

Act of Parliament, or to any lands or tenements the tithes whereof shall have been already perpetually commuted or extinguished under any Act of Parliament heretofore made.^b

Advertisements, Contracts, and Awards not to be liable to Stamp Duty.

91. And be it enacted, that no advertisement inserted by direction of the commissioners or any assistant commissioner, or by any titheowner or landowner, in the *London Gazette*, or in any newspaper, for the purpose of carrying into effect any provision of this Act, and no agreement, award, or power of attorney made or confirmed or used under this Act, shall be chargeable with any stamp duty.

Correspondence of Commissioners, relating to this Act, to be free of Postage.

92. And be it enacted, that the said commissioners may receive and send by the general post from and to places in *England* and *Wales* all letters and packets relating exclusively to the execution of this Act, free from the duty of postage, provided that such letters and packets as shall be sent to the said commissioners be directed to the "Tithe Commissioners for *England* and *Wales*," at their office in *London*,

^b There are some descriptions of tithe which, though partly derived, indirectly, from the land, cannot properly be charged on any specific lands, except it be on the premises in which those animals are kept, by which they are directly produced: such are the tithes of the milk and calves of stall-fed cows, and of pigs, poultry, &c. kept in villages or towns. The inconvenience of fixing a permanent rent-charge in lieu of a tithe so transitory and intermitting, was foreseen, and a proviso was therefore framed, excepting them from the operation of this Bill, which, however, was rejected. The consequences are, that supposing sixty or one hundred cows to be now kept, and milked in sheds, the tithe of their milk and calves must be perpetuated against the whole parish, and apportioned by valuers, or by the commissioners, on some lands or premises in that parish. It is much to be feared that this will put difficulties in the way of the voluntary adoption of the Bill in all places where more than a trifling amount of such tithe exists. It is of importance that all parties should be aware of the difficulty.

and that all such letters and packets as shall be sent by the said commissioners shall be in covers, with the words "Tithe Commissioners for *England and Wales*" printed on the same, and be signed on the outside thereof under such words with the name of such person in his own handwriting as the said commissioners, with the consent of the lords commissioners of the treasury or any three or more of them, shall appoint, (such name to be from time to time sent to the secretary of the General Post-office in *London*,) and be sealed with the seal of the said commissioners, and under such other regulations as the said lords commissioners or any three or more of them shall think fit; and if the person so to be appointed shall subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate exclusively to the execution of this Act, or if the person so to be appointed, or any other person, shall send or cause to be sent under any such cover any letter, paper, or writing, or any enclosure, other than shall relate exclusively to the execution of this Act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of such penalty shall be paid to the use of His Majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same; and every such penalty may be sued for and recovered in any of His Majesty's courts of record in *Westminster*.

98. And be it enacted, that if any person, under the provisions of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false

False Evidence to be deemed Perjury; withholding Evidence a Misdemeanor.

affidavit or declaration for the purposes of this Act, he shall suffer the penalties of perjury; and if any person shall wilfully refuse to attend in obedience to any lawful summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, withhold, destroy, or refuse to produce any book, deed, contract, agreement, account, or writing, terrier, map, plan or survey, or any copy of the same, which may be lawfully required to be produced before the said commissioners or assistant commissioner, he shall be deemed guilty of a misdemeanor.

Limitation of
Actions
against Com-
missioners,
Assistant Com-
missioners,
Justices, &c.

94. And be it enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, justice of the peace, valuer, umpire, or surveyor, for anything done under the authority of this Act, until twenty-one days' notice thereof shall have been given in writing to the party against whom such action or suit is intended to be brought, or after sufficient satisfaction or tender of amends shall have been made to any party aggrieved, or after three calendar months shall have expired from the commission of the act for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried in the county or place where the cause of action shall have arisen, and not in any other county or place; and if it shall appear that such notice of action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient amends were made or tendered as aforesaid, or if any such action or suit shall not be commenced within the time before limited in that behalf, or such action shall be laid in any county or place other than as aforesaid, then the jury shall find a verdict for the defendant therein, or the court, upon summary application by motion in any

such suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges, and expenses as between attorney and client.

95. And be it enacted, that no order, adjudication, or proceeding made or had by or before the commissioners or any assistant commissioner under the authority of this Act, or any proceeding to be had touching any offender against this Act, shall be quashed for want of form, or be removed or removable by certiorari, or any other writ or process, into any of His Majesty's courts of record at *Westminster*, or elsewhere.

Proceedings under this Act not to be quashed for want of form, nor to be removed by Certiorari.

96. And be it enacted, that this Act shall extend only to *England* and *Wales*.

Limits of Act.

97. And be it further enacted, that this Act may be amended, altered or repealed by any Act or Acts to be passed in this present Session of Parliament.

May be Amended, &c. this Session.

NOTE.

THE following rule has been communicated to me by Mr. DRINKWATER, by which the variations in the value of any rent-charge may be readily calculated. It will always give less than the true value, but the error will never amount to half a farthing per £1.

RULE. Add together the price of a bushel of wheat, barley, and oats, (as published in the Gazette, according to the Act,) and subtract one-twentieth part of the sum. Call the remainder (*A*).

Add together the price of a bushel of barley, and of two bushels of oats; subtract one-fourth part of the sum, and one-fiftieth part of the remainder. Call the last remainder (*B*).

The sum of (*A*) and (*B*) is the value in any year of that which was £1 at the time of commutation.

Ex. 1. Let the price of wheat be 7*s.* 0½*d.*, barley 3*s.* 11½*d.*, and oats 2*s.* 9*d.* per bushel.

<i>s.</i> <i>d.</i>	
Wheat 7 0½	
Barley 3 11½	
Oats . 2 9	
13 8½	<i>s.</i>
13 8½ or 13.729	
.68645 = $\frac{1}{20}$	
13.04255 = (<i>A</i>)	
6.95494 = (<i>B</i>)	

<i>s.</i> <i>d.</i>	
Barley 3 11½	
2. Oats . 5 6	
9 5½	<i>s.</i>
9 5½ or 9.46250	
2.36562 = $\frac{1}{4}$	
7.09688	
14194 = $\frac{1}{50}$	
6.95494 = (<i>B</i>)	

Answer 19.99749

Accurate value 20 Error $\frac{1}{8}$ of a farthing.

Ex. 2. Let the price of wheat be 6*s.*, barley 3*s.* 6*d.*, and oats 2*s.* 6*d.* per bushel.

<i>s.</i> <i>d.</i>	
Wheat 6 0	
Barley 3 6	
Oats . 2 6	
12 0	<i>s.</i>
12	
.6 = $\frac{1}{20}$	
11.4 = (<i>A</i>)	
6.2475 = (<i>B</i>)	

<i>s.</i> <i>d.</i>	
Barley 3 6	
2. Oats . 5 0	
8 6	<i>s.</i>
8 6 = 8.5	
2.125 = $\frac{1}{4}$	
6.375	
1275 = $\frac{1}{50}$	
6.2475 = (<i>B</i>)	

Answer 17.6475

Accurate value 17.6526 Error $\frac{1}{4}$ of a farthing.

The investigation of this rule is very simple.

The present prices, as deduced from the return made to the House of Commons, from the Corn Office, and which will govern the conversions, are those assumed in the first example;—viz. Wheat 7*s.* 0½*d.* Barley 3*s.* 11½*d.* Oats 2*s.* 9*d.*

Let the prices in any following year be, Wheat *X*, Barley *Y*, Oats *Z*.

Then the value of £1 converted at the present prices, and reconverted at the supposed prices, *X*, *Y*, *Z*,

$$= \frac{\overset{s.}{6} \overset{d.}{8}}{7 \ 0\frac{1}{4}} \cdot X \quad + \quad \frac{\overset{s.}{6} \overset{d.}{8}}{3 \ 11\frac{1}{2}} \cdot Y \quad + \quad \frac{\overset{s.}{6} \overset{d.}{8}}{2 \ 9} \cdot Z$$

$$= \frac{320}{337} \cdot X \quad + \quad \frac{320}{190} \cdot Y \quad + \quad \frac{320}{132} \cdot Z$$

$$\frac{320}{337} = .94955 = .95 - .00046$$

$$\frac{320}{190} = 1.6842 = .95 + .7342 = .95 + .735 - .0008$$

$$\frac{320}{132} = 2.4242 = .95 + 1.4742 = .95 + 2 \times .735 + .0042$$

Therefore the value of £1 becomes .95 (*X* + *Y* + *Z*) + .735 (*Y* + 2 *Z*) + .0042 *Z* - (.00046 *X* + .0008 *Y*)

The first line contains the result of the rule for95 = $\frac{19}{20}$
and735 = $\frac{3}{4} (1 - \frac{1}{50})$

The error of the rule is therefore contained in the second line.

A table is subjoined, showing the average price of seven years preceding every year since 1820.

It may be assumed that the average price of wheat will never be more than three times the average price of oats, nor barley more than twice the average price of oats.

With those extreme values the error is still in defect, and amounts to .00122 *Z*.

It may also be assumed, that the average price of wheat will never be less than twice the average price of oats, nor barley less than oats.

With those extreme values the error is at its greatest, and amounts to .0025 *Z*, which is less than half a farthing, so long as *Z* is less than 4*s.* *i. e.* whenever oats are less than 32*s.* per quarter.

*Average Price of Corn during Seven Years ending at
the Christmas preceding each Year.*

Years.	Wheat.		Barley.		Oats.	
	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>
1821	75	2	39	0	26	3
1822	72	2	37	10	25	6
1823	68	6	37	6	25	5
1824	63	10	35	7	24	4
1825	61	3	33	8	23	4
1826	59	0	32	0	23	2
1827	57	5	32	4	23	7
1828	58	1	33	4	24	0
1829	61	2	34	10	24	8
1830	62	8	35	0	24	11
1831	63	0	35	3	24	11
1832	61	7	34	3	24	2
1833	60	10	33	3	23	0
1834	59	3	32	3	22	1
1835	56	3	31	10	22	0

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